

Exhibit 15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
) Case No.
v.) 20-Civ-10832 (AT) (SN)
)
RIPPLE LABS, INC., BRADLEY)
GARLINGHOUSE, and CHRISTIAN)
LARSEN,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF
BRADLEY T. BORDEN
Friday, December 3, 2021

Reported by:
BRIDGET LOMBARDOZZI,
CSR, RMR, CRR, CLR
JOB No. 211203BLO

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK
 3

4 SECURITIES AND EXCHANGE)
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 8 GARLINGHOUSE, and CHRISTIAN)
 LARSEN,)
 9)
 Defendants.)
 10 _____)
 11
 12
 13
 14

15 Videotaped deposition of BRADLEY T. BORDEN
 16 taken on behalf of Plaintiff, held at the offices of
 17 Debevoise & Plimpton, 919 Third Avenue, New York,
 18 New York, commencing at 9:15 a.m. and ending at
 19 3:55 p.m., on Friday, December 3, 2021, before
 20 Bridget Lombardozzi, CCR, RMR, CRR, CLR, and Notary
 21 Public of the States of New York and New Jersey,
 22 pursuant to notice.
 23
 24
 25

A P P E A R A N C E S (Via Remote where indicated):

For the Plaintiff:

UNITED STATES SECURITIES AND EXCHANGE

COMMISSION, NEW YORK REGIONAL OFFICE

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A P P E A R A N C E S (Continued):

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12 ALSO PRESENT:

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14 STELLA UVAYDOVA, Paralegal, SEC

15 ERIC NOLAN, Videographer
16 Shereck Video Service

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WITNESS

EXAMINATION

BRADLEY T. BORDEN

BY MS. GUERRIER

10

EXHIBITS

SEC

NUMBER

DESCRIPTION

PAGE

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Expert Report of Bradley

14

T. Borden dated 10-4-21

NO BATES, 36 pages

Exhibit 2

Curriculum Vitae of Professor

107

Bradley T. Borden from

Brooklyn Law School website

NO BATES, 19 pages

Exhibit 3

Notice 2014-21 Guideline

158

from IRS

NO BATES, 6 pages

EXHIBITS

SEC NUMBER	DESCRIPTION	PAGE
Exhibit 4	Plaintiff's Answers and Objections to Defendants' First Set of Requests for Admission NO BATES, 35 pages	177
Exhibit 5	26 CRF 1.61-1: Gross Income Rev. Rul. 2019-24 NO BATES, 5 pages	189
Exhibit 6	IRS Form 1040 Schedule D Capital Gains and Losses NO BATES, 2 pages	253
Exhibit 7	IRS Form 8949, Sales and Other Dispositions of Capital Assets NO BATES, 2 pages	258

DEPOSITION SUPPORT INDEX

DIRECTION TO WITNESS NOT TO ANSWER

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REQUEST FOR DOCUMENTS

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1 - - -

2 9:15 a.m.

3 December 3, 2021

4 - - -

5 THE VIDEOGRAPHER: Good

6 morning. We are now on the video
7 record. Today is Friday, December
8 3rd, 2021. The time on the video
9 monitor is now 9:15 a.m.

10 We're here today for the video
11 deposition of Mr. Bradley Borden in the
12 matter of Securities and Exchange
13 Commission versus Ripple Labs, et al.,
14 filed in the United States District Court
15 of the Southern District of New York with
16 the case index file docket number of
17 20-cv-10832(AT)(SN).

18 My name is Eric Nolan, legal
19 videographer with Shereck Video.

20 Today we're at the offices of
21 Debevoise & Plimpton at 919 Third Avenue,
22 New York, New York.

23 At this time, typically all
24 attorneys enter their appearance, but we
25 have many people in the room and those

1 will be as per the written court reporter
2 transcript.

3 The court reporter today is
4 Ms. Bridget Lombardozzi with AIM.

5 Ms. Lombardozzi, will you
6 please swear in the witness at this time,
7 after which we may proceed.

8 B R A D L E Y B O R D E N,
9 having been duly sworn, was examined and
10 testified as follows:

11 THE REPORTER: Thank you.

12 You may proceed.

13 MS. GUERRIER: Thank you.

14 DIRECT-EXAMINATION

15 BY MS. GUERRIER:

16 Q. Good morning. I'm Pascal Guerrier. I'm
17 with the SEC. I'll be asking questions today.
18 Here with me is my colleague, Mark Sylvester, and
19 we have some SEC staff on the phone.

20 MR. FORD: Pascal, before we
21 begin, just to put on the record our
22 usual stipulation that an objection
23 by any one defendant is an objection
24 by all. We're not going to designate
25 the transcript confidential at this

1 time, but reserve our right to do
2 show if you show Mr. Borden anything
3 that has been marked confidential or
4 highly confidential.

5 MS. GUERRIER: That's fine.

6 Okay.

7 BY MS. GUERRIER:

8 Q. Can you state your full name, please?

9 A. Bradley Borden.

10 Q. And where do you reside?

11 A. Brooklyn, New York.

12 Q. Are you represented by counsel today?

13 A. No.

14 Q. Okay. You understand that you're giving
15 your testimony under oath?

16 A. Yes.

17 Q. Okay. And do you understand that your
18 questions to my -- my -- your answers to my
19 questions today have the same force and effect as
20 if we were in a courtroom?

21 A. Yes.

22 Q. Okay. Is there anything that will
23 prevent you from testifying truthfully and
24 accurately today?

25 A. No.

1 Q. Okay. If you don't understand my
2 questions, please let me know and I'll rephrase
3 them or ask them again.

4 Please allow me to finish my questions
5 before you answer so that the court reporter can
6 get an accurate record.

7 Also, please verbalize your answers
8 because nods of the head and other nonverbal
9 movements cannot be recorded.

10 Do you have any questions?

11 A. No.

12 Q. Okay. If -- also, if you need a break,
13 let me know and we'll accommodate you.

14 A. Thank you.

15 Q. Okay. Just in general, have you had
16 your deposition taken before?

17 A. Yes.

18 Q. Okay. And do you recall when?

19 A. I had a deposition taken earlier this
20 year, like January or February.

21 Q. And -- I'm sorry, go ahead.

22 A. And I think I've had it taken two other
23 times before that.

24 Q. Okay. The one -- the deposition that
25 was taken earlier this year, do you recall what

1 case that was?

2 A. It's cited in -- in my report.

3 Q. Okay. So all the depositions that you
4 just referred to today, are they cited in your
5 report?

6 A. No. The ones that were -- I think it
7 was last four years.

8 Q. Okay. So we'll get into that later on.

9 MS. GUERRIER: Exhibit 1.

10 Thank you.

11 MR. FORD: Bridget, do you
12 need one?

13 THE REPORTER: Yes. Thank
14 you.

15 MS. GUERRIER: Ready?

16 BY MS. GUERRIER:

17 Q. I've handed you a document premarked
18 Exhibit 1.

19 Do you recognize the document?

20 A. Yes. This is my report.

21 Q. Okay.

22 A. My expert report.

23 Q. Okay. And have you prepared any
24 documents, reports, other than the document that
25 I've listed?

1 MR. FORD: Object to the
2 form. Do you mean in this case --

3 MS. GUERRIER: Yes.

4 MR. FORD: -- or other
5 cases?

6 A. In this case this is the only report
7 that I've prepared.

8 Q. Okay. And when did you prepare this
9 report?

10 A. This report was prepared -- it's dated
11 October 4th, 2021.

12 Q. Okay. Do you recall when you started
13 preparing the report?

14 A. I don't know if I recall exactly, but
15 maybe the early part of September 2021.

16 Q. Okay. And did you sign the report?

17 A. Yes.

18 Q. Do you recall when you signed the
19 report?

20 A. October. October 4th, 2021.

21 Q. Okay.

22 MS. GUERRIER: If we could
23 please mark this as Exhibit 1.

24 (Whereupon, exhibit is
25 presented and marked SEC Borden

1 Deposition Exhibit 1 for identification.)

2 BY MS. GUERRIER:

3 Q. Have you finished all the work that you
4 were asked to do in this case?

5 A. Yes.

6 Q. Okay. And has any information come to
7 light since you've signed this report that has
8 affected or altered your opinions that are set in
9 your report in any way?

10 A. No.

11 Q. Okay. So are you ready to testify about
12 the final report you're offering in this case?

13 A. Yes.

14 Q. Okay. Do you consider yourself an
15 expert?

16 MR. FORD: Object to the
17 form.

18 A. I'm an expert with respect to the
19 material in the report.

20 Q. Okay. Do you advertise yourself as an
21 expert?

22 A. Yes.

23 Q. Where do you advertise yourself as an
24 expert?

25 A. I have a website that says that I

1 provide expert opinion.

2 Q. What is the website?

3 A. Bradborden.com.

4 Q. Do you -- is this the only advertisement
5 that you have for your services as an expert?

6 A. My CV lists some cases that I have been
7 retained to be an expert in.

8 Q. My question is: Do you advertise your
9 services as an expert other than on your website?

10 A. Well, that may -- my CV is public on the
11 law school's website. So it would appear there.

12 Q. And what is the law school?

13 A. Brook -- Brooklyn Law School.

14 Q. Okay. Do you belong to any expert
15 witness databases?

16 MR. FORD: Object to the
17 form.

18 A. I'm not sure what that -- what that
19 means.

20 Q. Is there any service that lists you as
21 an expert?

22 MR. FORD: Object to the
23 form.

24 A. Yeah. I -- I'm -- I'm not -- I'm not
25 sure that any do.

1 Q. Okay.

2 A. I...

3 Q. Is it possible that you are listed on
4 expert witness services?

5 MR. FORD: Object to the
6 form.

7 A. Yeah. When you say -- can you -- can
8 you describe what you mean by "expert witness
9 services"?

10 Q. Well, I asked if you were -- there were
11 any databases that provide expert services where
12 you are listed.

13 MR. FORD: Sorry. There
14 isn't a question pending.

15 MS. GUERRIER: Well, he
16 asked me to clarify so I did. So the
17 question is pending.

18 A. All right. Let me just make sure.

19 MR. FORD: Do you understand
20 the question?

21 THE WITNESS: No.

22 Q. All right. So my question was: Do you
23 belong to any expert witness databases or any
24 services that provide experts?

25 MR. FORD: Object to the

1 form; asked and answered.

2 A. Yeah, I'm not -- I'm not sure how to --
3 to -- to answer that question. I'm not exactly
4 sure what you're asking.

5 Q. Are you listed with any company that
6 helps provide expert services?

7 MR. FORD: Object to the
8 form.

9 A. That helps provide expert services?

10 Q. Yes.

11 A. Again, I don't -- I'm not aware of
12 companies that provide expert services.

13 Q. Okay. So is the -- is the answer that
14 you're -- you're not listed on any -- other than
15 the websites that you've described today, are you
16 listed on any other websites --

17 MR. FORD: Object to the
18 form.

19 Q. -- for your services?

20 MR. FORD: Sorry.

21 A. Not --

22 MR. FORD: Object to the form.

23 A. Yeah. Not that I'm aware of.

24 Q. Okay. Do you have a set charge for
25 particular types of services that you provide?

1 MR. FORD: Object to the
2 form.

3 A. I have -- I can tell you what my billing
4 rate is in this case.

5 Q. That's not what I'm asking.

6 A. Okay.

7 Q. I'm asking do you have a set charge for
8 expert services that you provide?

9 A. Yes.

10 Q. What is your charge for expert services
11 that you provide?

12 A. It's \$1,290 per hour.

13 Q. Is this the same rate that you charge
14 to -- for all your services?

15 MR. FORD: Object to the
16 form.

17 Do you mean his expert witness
18 services?

19 MS. GUERRIER: Yes, clearly.

20 A. Yes.

21 Q. Okay. Do you charge a fee based on the
22 types of service that you would be providing as an
23 expert?

24 A. As an expert witness?

25 Q. Yes.

1 A. Expert witness is the -- is the same
2 fee.

3 Q. Okay. So do you have a set charge for
4 depositions?

5 A. No.

6 Q. Do you have a set charge for trial
7 testimony?

8 A. No.

9 Q. Do you have a set charge for file
10 review?

11 A. What -- what do you mean by "file
12 review"?

13 Q. Do you review documents when you are
14 preparing or formulating your opinion in a case?

15 A. Yes.

16 Q. Do you have a set charge for those types
17 of services?

18 A. If it's related to providing an expert
19 report or preparing for testimony, it's the same.
20 It's the same rate.

21 Q. The 1,290?

22 A. (Indicating.)

23 THE REPORTER: Verbal
24 response, please.

25 MR. FORD: Just answer yes

1 or no.

2 A. Oh. Yes. Sorry.

3 MR. FORD: For the court

4 reporter.

5 Q. How much of your income is from expert
6 services?

7 MR. FORD: Object to the

8 form.

9 A. How -- how much as a percentage?

10 Q. How much of your income is from expert
11 services? Yes, a percentage of your income.

12 MR. FORD: Object to the

13 form.

14 A. Yeah, I -- I don't know off the top of
15 my head.

16 Q. Okay. Would you say more than 50
17 percent of your income is from expert services?

18 MR. FORD: Object to the

19 form.

20 A. I'd have to -- I'd have to go back and
21 look. I don't want to speculate on that.

22 Q. Which party in a case do you mainly work
23 with?

24 MR. FORD: Object to the

25 form.

1 A. Yeah. I was retained by Kellogg,
2 Hansen, Todd, Figel on behalf of Ripple Labs.

3 Q. So when you work as an expert witness,
4 do you represent mainly defendants or mainly
5 plaintiffs?

6 MR. FORD: Object to the
7 form.

8 A. Yeah. As an expert witness, I'm not
9 hired to represent a party.

10 Q. Okay. So who do you testify on behalf
11 of, plaintiffs or defendants?

12 A. I --

13 MR. FORD: Object to the
14 form.

15 A. Yeah. Again, I've -- I've been retained
16 by the law firm Kellogg Hansen on behalf of Ripple
17 Labs.

18 Q. Other than this case, what percentage of
19 your expert services you provide for plaintiffs
20 versus defendants?

21 MR. FORD: Object to the
22 form.

23 A. Yeah. That I -- yeah. I'd -- I'd have
24 to think to -- so I'm retained by law firms that
25 represent --

1 Q. Okay.

2 A. -- plaintiffs and defendants.

3 Q. Okay. So what percentage of your
4 services are provided for defendants versus
5 plaintiffs?

6 MR. FORD: Object to the
7 form.

8 A. Yeah. That would be -- that would be --
9 I don't know off the top of my head.

10 Q. Do you mostly represent defendants?

11 MR. FORD: Object to the
12 form.

13 A. Yeah. As an expert, I -- I don't
14 represent a party.

15 Q. Well, do you mostly provide expert
16 services on behalf of defendants?

17 MR. FORD: Object to the
18 form.

19 A. Yeah. I -- if you're asking am I mostly
20 retained by attorneys for defendants or
21 plaintiffs, that would be -- I'd -- I'd -- I'd
22 have to -- it's -- it's hard to quantify that.
23 It's hard to quantify that.

24 Q. Okay. So how many cases have you
25 testified as an expert witness in?

1 A. Yeah. I think this --

2 MR. FORD: Object to the
3 form.

4 Do you mean at deposition or
5 trial or both?

6 MS. GUERRIER: I'm talking
7 in testimony all together.

8 A. So this is the fourth time that I have
9 given deposition testimony.

10 Q. And how many times have you testified at
11 trial?

12 A. I've not testified at trial.

13 Q. In the four times that you've given
14 expert testimony, how many of those times were you
15 testifying on behalf of defendants?

16 MR. FORD: Object to the
17 form.

18 A. I would have to -- it -- that -- it's
19 hard to -- I'd have to go back and look at the
20 specific cases because sometimes it's difficult to
21 determine which party is the plaintiff and the
22 defendant in a case.

23 Q. So you --

24 A. If their claims are counterclaims, it
25 may be difficult to identify which one is the

1 plaintiff, which one is the defendant.

2 Q. So do you recall who you were re -- who
3 retained you in the four cases where you testified
4 at dep?

5 A. So the one in the -- the one that -- the
6 deposition testimony I gave earlier this year --
7 let me see if it's in here.

8 So, yeah, on page 10 of 10 of my CV. So
9 this is -- yeah. This case was Bernstein v. NN --
10 NNN Realty Investors, LLC. In that case I was
11 retained by the defendant's counsel.

12 Q. Okay. So the three other cases where
13 you testified --

14 A. It would be two others, right.

15 Q. Did you testify that you -- you stated
16 that you testified in four cases.

17 A. Right. So this -- this is the fourth.
18 I said this is the fourth.

19 Q. Okay. I'm talking in total, the number
20 four.

21 A. Yeah.

22 Q. Four cases. Is that -- that was your
23 testimony?

24 A. My -- this is the fourth time that I've
25 given testimony at deposition.

1 Q. Okay. So the other three times that you
2 gave testimony, who retained you in the other
3 three cases?

4 A. So in the one, the case that I gave
5 testimony earlier in this year in, I was retained
6 by the defendant's counsel.

7 Q. Okay. I'm asking about the three other
8 cases where you testified at deposition.

9 A. So there -- there are two --

10 MR. FORD: Object to the
11 form.

12 A. There are two other cases that I
13 testified in deposition --

14 Q. Okay.

15 A. -- other than this one and the one that
16 I gave deposition testimony in earlier this year.

17 Q. What case did you give deposition
18 testimony earlier this year?

19 A. This is -- the one I gave testimony,
20 deposition testimony, in earlier this year was
21 Bernstein v. NNN Realty Investors, LLC.

22 Q. Okay. What are the three other cases
23 that you -- where you gave deposition testimony?

24 MR. FORD: Object to the
25 form.

1 Counselor, I think he's
2 testified repeatedly that there aren't
3 three other cases. There are -- is this
4 case --

5 MS. GUERRIER: I don't need
6 --

7 MR. FORD: -- and the
8 Bernstein case.

9 MS. GUERRIER: Excuse me.
10 Please, just state your objection.
11 You don't need to testify. He can
12 explain himself.

13 MR. FORD: Okay.

14 BY MS. GUERRIER:

15 Q. So let me just try to clarify.

16 Did you testify that you -- did you just
17 testify that you gave four deposition testimonies?

18 A. I -- this is -- this is the fourth
19 deposition testimony that -- that I've given.

20 Q. Okay.

21 A. So counting this one, I've given three
22 others.

23 Q. So I'm asking you about the three other
24 cases where you gave deposition testimony.

25 A. Right.

1 Q. Do you recall who retained you in those
2 three cases?

3 A. So one of the other three cases was this
4 case that's cited in my CV.

5 Q. What case?

6 A. Bernstein v. NNN Realty Investors, LLC.

7 Q. Okay. So what other cases where you
8 gave deposition testimony?

9 A. I don't know if I can remember the names
10 of the other cases.

11 Q. Okay. Do you recall who retained you in
12 those cases?

13 A. One case -- again, I'd have to go back
14 and look. It would be -- the one case I believe
15 it was the plaintiff and the other case I don't
16 recall.

17 Q. Okay. So did we talk of the four cases
18 where you testified at deposition?

19 MR. FORD: Object to the
20 form.

21 A. So this case is one. This deposition is
22 one.

23 Q. Mm-hmm.

24 A. Bernstein v. NNN Realty Investors, LLC
25 is another case where I gave deposition testimony.

1 Q. Mm-hmm.

2 A. And then there was another one. I said
3 I believe the plaintiff's counsel retained me.
4 And then the fourth I don't recall if it was
5 plaintiffs or defendants.

6 Q. Okay. Do you recall what the case where
7 the defendant retained you, what that was about?

8 MR. FORD: Object to the
9 form.

10 Do you understand the question?

11 THE WITNESS: No.

12 Q. You don't recall what the --

13 A. I don't understand the question.

14 Q. Do you recall what the issue in the case
15 where the defendants retained you was?

16 MR. FORD: Object to the
17 form.

18 A. Can you be more specific? So you -- so
19 you -- yeah.

20 Q. Well, do you know what the case was
21 about?

22 MR. FORD: Object to the
23 form.

24 A. So in Bernstein v. NNN Realty Investors,
25 LLC, I was retained by the defendant's counsel.

1 Q. Okay. What type of case was Bernstein?

2 A. So as the CV describes, there are
3 several issues and several claims in that case.

4 Q. Okay. And what type of case was that?

5 A. It --

6 MR. FORD: Object to the
7 form; asked and answered.

8 Q. Can you answer the question, please?

9 A. So the type of case, if you look at the
10 CV --

11 Q. No, I'd like you to answer me the
12 question verbally, not, you know, point me to the
13 CV, please.

14 MR. FORD: Counsel, you
15 can't direct him to answer you in a
16 specific way.

17 MS. GUERRIER: I can. So if
18 you can just let me ask my questions.
19 You can object. Put your objection
20 on the record, but please stop
21 interrupting and verbalizing and
22 testifying.

23 A. Okay. So in -- in Bernstein v. NNN
24 Realty Investors, LLC --

25 Q. Mm-hmm.

1 A. -- this was a -- this was a case where I
2 did -- I was -- I gave deposition testimony
3 earlier this year.

4 Q. Okay.

5 A. In that case, the -- there were several
6 claims. There was an action for claimed breach of
7 contract, breach of implied covenant of good faith
8 and fair dealing, negligent misrepresentation,
9 market manipulation, securities fraud, control
10 person liability, setting aside fraudulent
11 transfers -- constructive fraud, setting aside
12 fraudulent transfers, actual fraud and --

13 THE REPORTER: Could you
14 slow down, please.

15 THE WITNESS: Sorry. Would
16 you like me to restate any part of
17 that?

18 THE REPORTER: Securities
19 fraud, control person liability?

20 A. Setting aside fraudulent transfers,
21 constructive fraud, setting aside fraudulent
22 transfers, actual fraud, and common-law fraud.

23 Q. Okay. And in the case where you were
24 retained by the plaintiff that you described, do
25 you recall what the case was about?

1 MR. FORD: Object to the
2 form.

3 A. That case -- yeah, that was several
4 years ago.

5 Q. Okay.

6 A. I believe that, as I remember, fraud was
7 one of the issues in that case.

8 Q. Okay. And is it your testimony that
9 there's another case where you don't recall what
10 that case was about?

11 MR. FORD: Object to the
12 form.

13 A. So there -- there is another case where
14 I gave expert test -- deposition. That case dealt
15 with title and the valid -- validity of title,
16 validity of a transfer.

17 Q. What kind of transfer?

18 A. A transfer of title.

19 Q. Is this in connection with real
20 property?

21 A. That was in connection with real
22 property.

23 Q. Okay. All right. When were you first
24 contacted in this case?

25 A. In August or September of this year.

1 Q. Do you recall who contacted you?

2 A. I don't recall the individuals. There
3 were attorneys at Debevoise and actually an -- an
4 attorney at Kellogg. Kellogg Hansen.

5 Q. Okay. Do you recall if you initiated
6 the contact?

7 A. I did not initiate the contact.

8 Q. Okay. Had you previous -- previously
9 worked with any of the attorneys who contacted
10 you to be an -- provide expert testimony in this
11 case?

12 A. No.

13 Q. Had you previously worked with anyone at
14 Ripple prior to this case?

15 A. No.

16 Q. Do you know how these attorneys knew how
17 to contact you?

18 MR. FORD: Object to the
19 form. Just a yes-or-no answer.

20 A. Will you repeat the question?

21 Q. Do you know how the attorneys who
22 contacted you knew how to contact you?

23 MR. FORD: Same objection.

24 Same instruction.

25 A. Yes.

1 Q. Okay. And how did they know how to
2 contact you?

3 MR. FORD: So I'm going to
4 direct you not to answer to the
5 extent you only know that through
6 your conversations with counsel. If
7 you have an independent understanding
8 outside of conversations with
9 counsel, you can answer.

10 THE WITNESS: Okay.

11 A. I -- a colleague at Brooklyn Law School
12 replied to an email that he received I think from
13 someone at Debevoise.

14 Q. What is the name of this colleague?

15 A. Steven Dean.

16 Q. Does he work at Brooklyn Law School?

17 A. Yes.

18 Q. In what capacity does he work?

19 A. He's a professor.

20 Q. Okay. And you stated he replied to an
21 email.

22 Do you know what the content of the
23 email was that he replied to?

24 A. Someone had asked him if he knew a
25 professor who could be an expert.

1 Q. Was there anything else in the email
2 that he replied to?

3 MR. FORD: Object to the
4 form.

5 A. Not that I recall.

6 Q. Okay. So did -- I'm sorry, can you
7 repeat the name of the individual who replied to
8 the email?

9 A. Steven Dean.

10 Q. Dean.
11 So did Steven Dean then reach out to you
12 after he saw that email?

13 MR. FORD: Object to the
14 form.

15 A. I was cc'd on the email.

16 Q. You were cc'd.
17 Do you know why you were cc'd on the
18 email?

19 MR. FORD: Object to the
20 form.

21 A. So, as I said, someone had asked Steven
22 Dean if he knew someone who could be -- be an
23 expert in this case, and he replied cc'ing me
24 saying -- and giving my name.

25 Q. Okay. What is Steven Dean's title at

1 Brooklyn Law School?

2 A. Professor of law.

3 Q. Professor of law.

4 Do you know what type of expert that
5 Steven Dean was asked to look for?

6 A. I was --

7 MR. FORD: Object to the
8 form.

9 A. So Steven Dean is a -- he's a tax
10 professor.

11 Q. All right.

12 A. He was the director of the NYU LL.M.
13 program for the last couple of years. I don't
14 remember the content of the email offhand, but the
15 substance was they were looking for an expert to
16 provide expert testimony regarding tax issues --

17 Q. Okay.

18 A. -- in a case.

19 Q. Did the email identify who was looking
20 for the expert services?

21 A. I believe the -- the email to Steven
22 Dean was from -- he -- he was also a former -- I
23 believe he might have been an associate at
24 Debevoise. So it probably came from a former
25 colleague in the tax department.

1 Q. Okay. Did you have any other -- did you
2 have any conversations with Steven Dean regarding
3 the email that you described?

4 A. I don't remember having any
5 conversations with him about it. I probably
6 replied saying "Thanks for the introduction. I
7 would be happy to talk to the attorneys at
8 Debevoise."

9 Q. Did the email describe the type of
10 expert service that the attorneys were looking
11 for?

12 A. Again, I'd have to go back and look at
13 it. It -- it might have said they're looking for
14 someone who's familiar with the tax consequences
15 or the tax treatment of property transactions.

16 Q. Okay. Do you recall if the email stated
17 property transactions in general?

18 A. I -- I don't recall the specific wording
19 of the email.

20 Q. Was there any discussion about digital
21 assets in the email?

22 MR. FORD: Object to the
23 form.

24 A. Again, I don't -- I don't recall what
25 the specifics are of that email.

1 Q. Okay. Do you recall the date of the
2 email?

3 A. I do not.

4 Q. Okay. When did you reply to the
5 email?

6 A. Probably shortly after receiving it.

7 Q. Do you recall what you stated in your
8 reply to the email?

9 A. Probably would have said "Thanks for the
10 introduction. I would be happy to talk to the
11 attorneys."

12 Q. Okay. If you -- if you recall
13 specifically what you said and not in speculation
14 of what you thought --

15 A. I don't recall specifically what I said.

16 Q. Okay. Was this the only email
17 communication that you had with the attorneys in
18 this case when -- after you were cc'd on the email
19 to Mr. Dean?

20 MR. FORD: So object to the
21 form.

22 And just give a yes-or-no
23 answer to that question.

24 A. Will you repeat the question?

25 Q. Okay. Was this the only email

1 communication that you had with the attorneys when
2 you case -- on this case after you were cc'd on
3 the email with Mr. Dean in August?

4 A. No.

5 MR. FORD: Same -- same
6 objection.

7 And just yes or no.

8 A. No.

9 Q. Were there other emails that followed up
10 in August 2021 from the attorneys in this case to
11 you?

12 MR. FORD: Object to the
13 form.

14 Just a yes-or-no answer.

15 A. Yes.

16 Q. Do you recall how many emails came from
17 the attorneys in this case to you in August?

18 A. No.

19 Q. When did you meet with the attorneys in
20 this case in person for the first time?

21 MR. FORD: Object to the
22 form.

23 And just provide a -- a date if
24 you recall.

25 A. The first time I met with the attorneys

1 in this case in person was Tuesday of this week.

2 Q. Okay. After you replied to the email
3 from the attorneys in this case in August 2001
4 (sic), were you provided with an assignment for
5 this case?

6 MR. FORD: Object to the
7 form.

8 A. Yes.

9 Q. When were you provided with your
10 assignment in this case?

11 MR. FORD: Object to the
12 form.

13 A. I -- I don't recall the exact date.

14 Q. Okay. After the reply that you sent to
15 the attorneys in this case in August of 2001
16 (sic), did you follow up with any inquiry about
17 the case?

18 MR. FORD: Object to the
19 form. I think you mean August of
20 2021.

21 MS. GUERRIER: I think I
22 said -- 2021, yes.

23 A. Will you repeat the question?

24 Q. After the reply that you sent to the
25 attorneys in this case in August 2021, did you

1 follow up with any inquiry about the case?

2 MR. FORD: Object to the
3 form.

4 And just a yes-or-no answer.

5 A. Yeah. One more time. Sorry. Could you
6 repeat the question?

7 Q. Okay. So after the reply that you sent
8 to the attorneys in this case in August 2021, did
9 you follow with -- up with any inquiry about the
10 case?

11 MR. FORD: Object to the
12 form.

13 Just a yes-or-no answer if you
14 understand the question.

15 A. Yeah. I don't know that I understand
16 the question.

17 Q. All right.

18 MS. GUERRIER: I'm going to
19 ask that you just please state your
20 objection and not coach the witness.
21 It's really inappropriate.

22 MR. FORD: I'm directing him
23 as to privilege and I'm fully
24 permitted to direct him as
25 to privilege.

1 MS. GUERRIER: I understand,
2 but to tell him whether he
3 understands, I think he can verbalize
4 that, not you.

5 MR. FORD: I don't want to
6 direct him to give just a yes-or-no
7 answer --

8 MS. GUERRIER: Again --

9 MR. FORD: -- if he doesn't
10 understand the question.

11 MS. GUERRIER: -- the --
12 right, but you went further than
13 that. And so I'm just asking that
14 you just state your objection. And
15 then if he has questions, like I've
16 explained to him, he can ask me.

17 MR. FORD: I -- I didn't go
18 further than that and the record will
19 reflect that.

20 BY MS. GUERRIER:

21 Q. Okay. After you replied to the email
22 that was first sent to Mr. Dean in -- did you
23 contact the attorneys in this case to inquire
24 about the case?

25 MR. FORD: Object to the

1 form.

2 A "yes" or "no" or an "I don't
3 know" answer.

4 THE WITNESS: I don't know
5 what all I can answer, which
6 privilege. In other words --

7 MR. FORD: If you don't know
8 what you can answer without going
9 into privilege, then I'm going to
10 instruct you not to answer.

11 THE WITNESS: Okay.

12 BY MS. GUERRIER:

13 Q. Were you provided with any facts about
14 the case after you replied to the email -- the
15 email in August 2021?

16 A. Yes.

17 Q. Do you recall when you were provided
18 with any facts about the case after you replied to
19 the email in August 2021?

20 A. I don't know the exact date.

21 Q. Okay. Were you provided with any
22 documents about the case after you replied to the
23 email in August 2021?

24 A. Yes.

25 Q. Do you recall when you were provided

1 with any documents in the case?

2 A. No. I don't recall exact date.

3 Q. Did you have any initial consultation
4 with the attorneys in this case about the case?

5 MR. FORD: Object to the
6 form.

7 Just a yes-or-no answer if you
8 can answer.

9 A. Well, repeat the question again.

10 Q. Did you have any initial consultation
11 with the attorneys in this case about the case?

12 MR. FORD: Object to the
13 form.

14 And just a yes-or-no answer if
15 you can answer.

16 A. Yes.

17 Q. When did you have an initial
18 consultation with the attorneys in this case?

19 A. Again, I don't know the exact date. It
20 would have been August or early September.

21 Q. Was this initial consultation in person?

22 A. No.

23 Q. Okay. Was this initial consultation by
24 Zoom?

25 A. I believe it was by Zoom. It was either

1 Zoom or -- or phone.

2 Q. Okay. Were you provided with any
3 facts during this initial consultation about the
4 case?

5 MR. FORD: So object to the
6 form.

7 And only answer with respect to
8 facts you were provided. Nothing
9 further.

10 A. There may have been a general -- general
11 statement of facts or general information about
12 facts.

13 Q. What -- what was the general statement
14 of fact that you were provided with at the initial
15 consultation?

16 MR. FORD: Object to the
17 form.

18 And, again, keep your answer
19 just to facts. Nothing further.

20 A. The facts probably included identifying
21 Ripple as a party in the case and XRP.

22 Q. When you say "probably included," are
23 you speculating or do you recall specifically?

24 A. I -- I don't recall specifically. I --
25 I do -- my recollection is that Ripple Labs would

1 have been mentioned and then XRP was mentioned in
2 that initial call.

3 Q. Do you recall what was mentioned about
4 Ripple Labs with regard to the facts?

5 A. No.

6 MR. FORD: So -- sorry.

7 Again, with these questions, just
8 stick to the facts.

9 Q. Do you recall what was mentioned about
10 XRP --

11 A. No.

12 Q. -- during this initial consultation?

13 A. No.

14 Q. Okay. Were you shown any documents by
15 counsel during this initial consultation?

16 A. No.

17 Q. Okay. Were you provided with any
18 assumptions by counsel during this initial
19 consultation?

20 MR. FORD: Object to the
21 form.

22 A. Not that I recall.

23 Q. Okay. Do you recall when you were
24 retained as an expert in this case?

25 A. I don't recall the exact date.

1 Q. Okay. Do you recall approximately what
2 month of the year that you were retained as an
3 expert in this case?

4 A. It -- it would be in the
5 August/September, early September, range.

6 Q. Do you recall how long after the initial
7 cons -- consultation that you had with the
8 attorneys in this case that you were retained as
9 an expert?

10 A. I -- I don't -- don't recall.

11 Q. Okay. Did you receive any records for
12 this case after you were retained as an expert?

13 MR. FORD: Object to the
14 form.

15 A. I -- I received documents cited in my
16 report.

17 Q. Okay. What specific documents did you
18 receive after you were retained as an expert?

19 A. So if you -- I -- I can read them or I
20 can point to the reference.

21 Q. You can point me to the record.

22 A. Yeah. So it's on page 7, Footnote 7
23 through -- Footnote 7 through probably 16, 15 or
24 16.

25 Q. Do you recall who specifically provided

1 you with the records that you just described?

2 A. I don't know if I recall specifically
3 who provided me these records.

4 Q. Okay. So other than the records that
5 you described in Footnotes 7 through 16, were you
6 provided with any other records in this case after
7 you were retained as an expert?

8 MR. FORD: Object to the
9 form of the question.

10 A. I believe these are the only docu --
11 the -- the -- the documents cited in Footnotes 7
12 through 15 are the only documents -- maybe 16
13 also -- are the only documents that I recall
14 receiving from counsel in this case.

15 Q. Was there any communication about the
16 records that you just cited with counsel?

17 MR. FORD: Object to the
18 form.

19 And I'll instruct you just to
20 answer that yes or no if you understand
21 the question.

22 A. Will you repeat the question?

23 Q. Was there any communication about the
24 records that you cited with counsel?

25 MR. FORD: Object to the

1 form.

2 Same instruction.

3 A. Yes.

4 Q. Okay. Did counsel tell you to use these
5 documents in your report?

6 MR. FORD: Object to the
7 form.

8 I'm going to direct you not to
9 answer that question.

10 MS. GUERRIER: Why? I mean,
11 I'm asking him about documents that
12 he listed in his report. So why --

13 MR. FORD: You can ask him
14 whether counsel provided him with
15 facts or assumptions, but what --

16 MS. GUERRIER: I --

17 MR. FORD: -- counsel
18 directed or did not direct him to do
19 is -- is not the appropriate subject
20 of questioning.

21 MS. GUERRIER: Well,
22 documents that he considered which
23 are clearly listed in his report are
24 not protected -- communications about
25 these documents are not protected

1 communications.

2 MR. FORD: Communications
3 about the documents are protected to
4 the extent that all -- that you're
5 asking him about facts or assumptions
6 he was given by counsel, that's
7 completely fair and you can ask him
8 questions about that.

9 MS. GUERRIER: No, I can ask
10 him about the documents that he
11 considered and communications with
12 counsel about the documents that he
13 considered. Yes. That's Rule
14 26(b) --

15 MR. FORD: You can ask
16 him --

17 MS. GUERRIER: -- (4)(c).

18 MR. FORD: -- whether
19 counsel gave him facts or
20 assumptions.

21 MS. GUERRIER: No, I can
22 also ask him about the data that he
23 received and that's what I'm doing
24 right now.

25 MR. FORD: Sure. You can

1 ask him about the data. You can't
2 ask him about conversations with
3 counsel about the substance of --

4 MS. GUERRIER: I can ask him
5 about the conversation that has to do
6 with the documents that he considered
7 in his report.

8 MR. FORD: That's -- that's
9 work product.

10 MS. GUERRIER: That is not
11 work product. That's 26(b)(4)(c).

12 MR. FORD: 26(b)(4)(c)
13 allows you to ask him whether and
14 what facts and assumptions he
15 received --

16 MS. GUERRIER: And data.

17 MR. FORD: And data.

18 MS. GUERRIER: And I'm
19 asking him about the communications
20 regarding the data that he received.
21 That's not privileged.

22 MR. FORD: You're not
23 allowed to ask him about the
24 communications about that except to
25 the extent he can identify what facts

1 or assumptions or data he received
2 from counsel.

3 MS. GUERRIER: I'm asking
4 him about the communications with
5 counsel about the data that he
6 received and that he considered. I'm
7 not asking him about anything else.
8 So I think that is allowed under
9 26(b)(4)(c).

10 MR. FORD: Okay. So why
11 don't we do this. Why don't we take
12 it question by question.

13 I don't want you to stray into
14 the substance of communications with
15 counsel about the report other than to
16 the extent that you can describe what
17 facts, assumptions or data counsel gave
18 you. And if there is a case or some
19 other citation, we can talk about it over
20 a break.

21 MS. GUERRIER: Okay.

22 BY MS. GUERRIER:

23 Q. Well, what specifically did counsel
24 identify for you in the documents that you listed
25 in Footnote 7 through 15?

1 A. I don't know that I recall anything
2 being specifically identified by counsel in
3 those -- in those footnotes.

4 Q. Okay. So were you just -- let me -- how
5 did you know where to look for the specific
6 answers that you've cited in your Footnote 7
7 through 15?

8 MR. FORD: Object to the
9 form.

10 And, again, to the extent your
11 answer would get into substantive
12 conversations you had with counsel, I
13 direct you not to answer.

14 A. So -- so these -- these -- these
15 documents provide information about the
16 characteristics of XRP as discussed in the report.
17 So the relevant RFA answers that address these
18 specific characteristics were what I used in
19 drafting the report.

20 Q. Did anyone point you to the specific RFA
21 answers that you cited in your report?

22 MR. FORD: Object to the
23 form.

24 A. I'm trying to -- to remember how these
25 were delivered. Yeah. There -- the -- I don't

1 know if I recall. So I don't know if I re -- I
2 don't know if I -- I don't know. I can't re --
3 boy.

4 So I know that -- that they had -- that
5 these RFA answers provide information about the
6 characteristics of XRP.

7 Q. Okay. Well, my -- I'm sorry. Were you
8 done?

9 A. Yeah. Go ahead. You can -- yes, I'm
10 done with that.

11 Q. So you -- for example, RFA --
12 Plaintiff's RFA answer that you cited in Footnote
13 8 --

14 A. Mm-hmm.

15 Q. -- how did you know where to look for
16 the paragraphs that you listed in the footnote?

17 MR. FORD: Object to the
18 form of the question.

19 A. Right. Well, those -- so in Footnote 8,
20 those answers deal with whether the holders of XRP
21 are entitled to receive dividends.

22 Q. Mm-hmm.

23 A. And so that -- I read those answers and
24 recognized that they identify those
25 characteristics of XRP.

1 Q. Did you read each and every RFA that you
2 cited in your Footnote 7 -- footnotes on page 7?

3 A. Yes.

4 Q. Did anyone at Ripple tell you to look at
5 a specific RFA answer in response to any questions
6 that you had about the report?

7 MR. FORD: Object to the
8 form.

9 A. No.

10 Q. Are the -- all the RFA answers that you
11 listed in that report, you listed them from your
12 own independent review of the RFAs?

13 MR. FORD: Object to the
14 form of the question.

15 A. I cited them from my own independent
16 review of the RFAs.

17 Q. Okay.

18 MS. GUERRIER: All right.
19 We're going to take a short break.

20 THE WITNESS: Okay.

21 MS. GUERRIER: We'll go off
22 the record.

23 THE VIDEOGRAPHER: The time
24 on the video monitor is 10:04 a.m.

25 End of Media Unit No. 1. We're off

1 the video record.

2 (Whereupon, a recess is taken.)

3 THE VIDEOGRAPHER: The time

4 on the video monitor is now 10:20

5 a.m. Start of Media Unit Number 2.

6 We're back on the video record.

7 MS. GUERRIER: Okay.

8 BY MS. GUERRIER:

9 Q. May I call you professor?

10 A. Sure.

11 MS. GUERRIER: Ready?

12 MR. FORD: Yeah.

13 BY MS. GUERRIER:

14 Q. Okay. Were you retained to provide
15 expert services on behalf of all three defendants
16 in this case?

17 A. I was -- my report says the nature of
18 the -- of the retention. I was retained by
19 Kellogg Hansen on behalf of Ripple Labs to provide
20 expert opinion in this case.

21 Q. So only Ripple is your client in this
22 case?

23 A. Well, I was retained by Kellogg Hansen.

24 Q. Okay. Do you know who you represent --
25 I mean who you're providing services, which of the

1 defendants?

2 MR. FORD: Object to the
3 form.

4 A. Yeah. I mean, what I know is I was
5 retained by Kellogg Hansen.

6 Q. Okay. Do you know if you were retained
7 to provide expert services for Ripple?

8 A. I don't know.

9 Q. Okay. Are you expected to provide any
10 additional expert services outside of the report
11 that you drafted?

12 A. I've only been retained to work on this
13 report.

14 Q. Okay.

15 A. Or to -- as I've said, I've been
16 retained -- obviously I'm here also providing this
17 deposition.

18 Q. Okay. So do you know if you're going to
19 be retained to provide testimony at trial?

20 A. I -- I don't know that.

21 Q. Okay. Have you asked whether you would
22 be retained for any additional services?

23 A. I -- I have -- I have not.

24 Q. Okay. How much have you billed so far
25 for your expert services in this case?

1 A. The number of hours is probably around
2 130.

3 Q. Do you recall what you specifically
4 billed for?

5 MR. FORD: Object to the
6 form of the question.

7 A. I sent an -- I -- I submitted an
8 invoice.

9 Q. Okay. Do you know for what services
10 specifically you submitted the invoice for?

11 MR. FORD: Object to the
12 form of the question.

13 A. I -- I sub -- I submitted an invoice
14 after the report was submitted.

15 Q. Okay.

16 A. So it was worked on prior to the
17 report --

18 Q. Okay. What --

19 A. -- being submitted.

20 Q. What kind of work did you do prior to
21 the report that you submitted the invoice for?

22 A. Worked on the report.

23 Q. What specifically did you bill for your
24 work on the report?

25 A. Draft --

1 MR. FORD: I'm sorry. Hold
2 on one second.

3 Object to the form of the
4 question.

5 I don't want you to get into
6 the substance of the nature of your work
7 in answering. If you can answer
8 generally without getting into the
9 substance, you can answer the question.

10 A. So I billed for drafting the report.

11 Q. Did you bill for anything else?

12 MR. FORD: Same objection.

13 Same instruction.

14 A. I'd have to go back and look at the
15 invoice, but I would suspect that most entries
16 were -- were drafting the report.

17 Q. Do you know how much you've been paid so
18 far for the work that you've done in this case?

19 A. I think it's around 110,000.

20 Q. Do you know how many hours that you've
21 worked on this case thus far?

22 A. I think it's around 130 hours.

23 Q. Did you work alone on the report in this
24 case?

25 A. I -- I did work alone --

1 Q. Okay.

2 A. -- on the report.

3 Q. Was there anyone that is --

4 MS. ZORNBERG: Just one
5 moment. The Zoom is apparently
6 muted.

7 MR. FORD: I'm sorry. That
8 should -- that should do it.

9 BY MS. GUERRIER:

10 Q. Did anyone assist you with drafting the
11 report outside of counsel?

12 A. Can you be more specific about that to
13 make sure I understand what you're asking?

14 Q. Did anyone assist you with drafting the
15 report?

16 A. You said outside of counsel?

17 Q. Yes.

18 A. Can you be more specific about, like,
19 what you would be talking about there?

20 Q. Did you work with anyone outside of
21 counsel drafting the report?

22 A. No.

23 Q. Did you have a budget for your work in
24 this case?

25 A. No.

1 Q. Okay. Prior to your involvement in
2 being retained as an expert in this case, were you
3 acquainted with any of the attorneys on this case?

4 A. No, not that I recall.

5 Q. Other than Mr. Dean, whom you testified
6 was a former associate of Debevoise, were you --
7 do you know anyone who was acquainted with the
8 attorneys in this case?

9 MR. FORD: Object to the
10 form.

11 A. Yeah. I -- I -- yeah. I don't -- I --
12 I don't know that I know anyone that is -- that --
13 that -- that is acquainted with the people in this
14 case, the attorneys in this case.

15 Q. Okay. Are you familiar with the name
16 "Bradley Garlinghouse"?

17 A. Will you -- will you repeat that name?

18 Q. Bradley Garlinghouse.

19 A. Yeah. My understanding is that Bradley
20 Garlinghouse is a defendant in this case.

21 Q. Okay. So do you have any personal
22 relationship with Bradley Garlinghouse?

23 A. No.

24 Q. Okay. Are you familiar with the name
25 "Christian Larsen"?

1 A. Again, he's a named defendant in this
2 case. He or she.

3 Q. Do you have say personal relationship
4 with Christian Larsen?

5 A. No.

6 Q. Do you own any XRP?

7 A. No.

8 Q. Have you ever bought or sold XRP?

9 A. No.

10 Q. Have you received any compensation in
11 XRP?

12 A. No.

13 Q. Do you expect to receive any
14 compensation in XRP?

15 A. No.

16 Q. Did you do anything to prepare for your
17 deposition?

18 A. Yes.

19 Q. What did you do to prepare for your
20 deposition?

21 A. I reviewed the report; reviewed the
22 materials cited in the report; and met with
23 attorneys --

24 Q. Okay.

25 A. -- at -- at Debevoise.

1 Q. Now, did you review the report on your
2 own time?

3 MR. FORD: Object to the
4 form of the question.

5 A. What -- what do you mean by my "own
6 time"?

7 Q. Did you review the report -- the report
8 without counsel present?

9 A. Yes.

10 Q. Okay. Do you know how much time you
11 spent reviewing the report to prepare for your
12 deposition?

13 A. I don't know specifically.

14 Q. When did you meet with the attorneys to
15 prepare for the deposition in this case?

16 A. We met once by Zoom before Thanksgiving,
17 we met on Tuesday of this week, and we met
18 yesterday.

19 Q. How long was your meeting by Zoom with
20 the attorneys in this case?

21 A. Probably an hour.

22 MR. FORD: I'm sorry.

23 Object to the form.

24 Q. And how long was your meeting on Tuesday
25 with the attorneys in this case?

1 A. It was two and a half, three hours. Two
2 or three hours.

3 Q. And how long was your meeting with the
4 attorneys in this case yesterday?

5 A. It was, again, in the three-hour range.

6 Q. Okay. Who was present during the Zoom
7 meeting?

8 MR. FORD: Object to the
9 form.

10 A. So the -- I was in the -- the Zoom
11 meeting on Tuesday before -- or I don't know if it
12 was a Tuesday. I can't remember what day it was.
13 Before Thanksgiving. We met by Zoom. I was
14 there. As I recall, Chris Ford was there, Lisa
15 Zornberg was there, and Dan Marcus.

16 Q. Okay. Is this the -- this is the Zoom
17 meeting before Thanksgiving?

18 A. Before Thanksgiving.

19 Q. So the Zoom meeting on Tuesday --

20 A. Tuesday.

21 Q. -- was that Tuesday this week?

22 A. Tuesday was in person this week.

23 Q. Okay. Who was present at the meeting on
24 Tuesday?

25 A. It was me and the same three attorneys.

1 Q. And your meeting today with the
2 attorneys, who was present?

3 MR. FORD: Object to the
4 form. You mean yesterday?

5 Q. Did you say that -- I'm sorry.
6 Yesterday.

7 A. Yeah. Yesterday, again, it was the same
8 three attorneys from Debevoise, and then there
9 were attorneys on -- connected through Zoom.

10 Q. Do you know who was connected through
11 Zoom?

12 A. The only one I recall is Reid Figel and
13 then there was someone else, but I don't -- I
14 don't know if remember his name.

15 Q. Do you know how many attorneys were
16 connected through Zoom?

17 A. I don't. There was more than one, but
18 I -- my focus -- Zoom was there; my focus was
19 here, so...

20 Q. Okay. Did you do anything else to
21 prepare for your deposition other than reviewing
22 the report and meeting with the attorneys in this
23 case?

24 MR. FORD: Object to the
25 form of the question.

1 A. So -- so that's right. I reviewed the
2 report and then I also reviewed the materials
3 cited in the report.

4 Q. Okay. When did you -- I'm sorry.
5 When did you review the materials cited
6 in the report?

7 A. As -- as part of the preparation.

8 Q. Okay. Did you review the materials
9 cited in the report when you met with the
10 attorneys yesterday?

11 A. Did -- during that meeting did we review
12 the materials?

13 Q. Yes, review --

14 A. Did I review the materials during that
15 meeting --

16 Q. Yes.

17 A. -- yesterday?

18 I definitely reviewed materials. I
19 don't know if we reviewed all the materials, but
20 definitely reviewed materials in the meeting.

21 Q. Do you recall what specific materials
22 you reviewed at the meeting yesterday?

23 MR. FORD: So, actually, I
24 think I'm going to direct you not to
25 answer that.

1 MS. GUERRIER: On what
2 grounds?

3 MR. FORD: Because the
4 specific materials we chose or did
5 not choose to show him during our
6 prep is work product.

7 MS. GUERRIER: Okay. He
8 stated that he reviewed materials
9 cited in his report. So I'm asking
10 him what specific materials he
11 reviewed that were cited in the
12 report.

13 MR. FORD: You can ask him
14 what materials he reviewed on his
15 own, but the materials we chose to --

16 MS. GUERRIER: I --

17 MR. FORD: -- show him
18 during the meeting yesterday is work
19 product.

20 MS. GUERRIER: That's not
21 what I asked him.

22 MR. FORD: It is. You --
23 you asked him "Do you recall what
24 specific materials you reviewed at
25 the meeting yesterday?"

1 MS. GUERRIER: I didn't ask
2 whether you showed the meeting -- the
3 material. I asked what he reviewed
4 at the meeting.

5 MR. FORD: He testified that
6 the meeting yesterday was with
7 counsel and so the materials that he
8 reviewed were materials he reviewed
9 with counsel.

10 MS. GUERRIER: Well, he
11 didn't testify to that.

12 MR. FORD: He -- he
13 testified that the mater --

14 MS. GUERRIER: Again.
15 Okay --

16 MR. FORD: -- that the
17 meeting was with counsel.

18 MS. GUERRIER: I'm -- we're
19 not going to have this on the record.
20 I mean, I'm asking him about specific
21 materials that he reviewed at the
22 meeting.

23 MR. FORD: And I'm
24 instructing him not to answer.

25 MS. GUERRIER: Okay. Well,

1 I think that that's an improper
2 instruction, but I'm going to move
3 forward from that question.

4 BY MS. GUERRIER:

5 Q. Did you discuss this case with anyone
6 other than counsel?

7 A. No.

8 Q. And did you discuss any of the opinions
9 that you formed in this case with anyone other
10 than counsel?

11 A. No.

12 Q. Okay. Can you walk me through the
13 process that you undertook for preparing your
14 report?

15 A. Sure. So I was asked the questions that
16 are -- that are presented in the report.

17 Q. Mm-hmm.

18 A. And the questions deal with whether XRP
19 and virtual currency such as XRP are securities
20 under the federal income tax rules.

21 So I looked for places in the Internal
22 Revenue Code where "securities" is used and looked
23 at the definitions of securities as used in the
24 Internal Revenue Code, in particular as provisions
25 relate to the federal income tax classification of

1 securities or defined securities for federal
2 income tax purposes.

3 Q. And is this your entire process for
4 preparing your report?

5 MR. FORD: Object to the
6 form.

7 A. So I did a search for places where the
8 term "securities" is used in the Internal Revenue
9 Code focusing on where it's used for federal
10 income tax purposes.

11 THE REPORTER: Focusing on?

12 THE WITNESS: Focusing on
13 places where the term "securities" is
14 used for federal income tax purposes
15 in the Internal Revenue Code.

16 A. When -- and then I began the process of
17 reading how "securities" was used in the Internal
18 Revenue Code and reading definitions of
19 "securities" that appeared in the Internal Revenue
20 Code with the focus on the federal income tax; how
21 the term "securities" affects the application of
22 federal income tax rules.

23 Q. Who did the actual writing of the
24 report?

25 MR. FORD: Object to the

1 form of the question.

2 A. So I -- I wrote the report.

3 Q. Did anyone else assist you with writing
4 the report?

5 A. I received comments and edits from
6 counsel.

7 Q. Do you recall how much time you spent
8 drafting the report?

9 A. I -- I -- I don't know if I recall the
10 exact time, as I said earlier. The invoice that I
11 submitted after the report was submitted was in
12 the neighborhood of \$110,000.

13 Q. But you can't recall what specific time
14 you spent on the report?

15 A. Well, about --

16 MR. FORD: Object to the
17 form.

18 A. So the -- so the time spent before that
19 invoice was on -- on the report.

20 Q. Okay. Well, what part of that was spent
21 drafting the report? Do you recall?

22 A. What do you mean by "drafting"?

23 Q. What part of your time was spent
24 drafting the report?

25 A. What do you mean by "drafting"?

1 Q. Did you write the report?

2 A. Yes.

3 Q. How much time did you spend writing the
4 report?

5 A. Like, actually at the keyboard?

6 Q. I believe -- however --

7 A. That, I -- that I would not -- I don't
8 know.

9 Q. So when you bill for the time that you
10 work on this case, do you bill for the time that
11 you drafted the report?

12 A. I -- I --

13 MR. FORD: Object to the
14 form of the question.

15 A. I'd have to go back and look at the
16 invoice, but it probably has something to the
17 effect of "draft report." That would be most of
18 the time.

19 Q. Can you assign a percentage of the time
20 that you spent drafting the report?

21 A. No, I can't.

22 MR. FORD: Object to the
23 form of the question.

24 Just give me a second.

25 THE WITNESS: Okay.

1 BY MS. GUERRIER:

2 Q. Were there any drafts of the report that
3 you finally submitted?

4 MR. FORD: Object to the
5 form of the question.

6 And just answer that yes or no.

7 A. I -- I don't understand that question.

8 Q. Is this the only draft of the report
9 that you submitted in this case?

10 A. Yes.

11 MR. FORD: Same objection.

12 And just answer the question
13 yes or no if you understood it.

14 Q. Did you have a work in progress in the
15 report that you were drafting?

16 MR. FORD: Object to the
17 form of the question.

18 If you can answer the question
19 yes or no.

20 A. I don't -- I don't understand what
21 you're -- what you're asking. This was submitted.

22 Q. Okay.

23 A. It's the only thing that was submitted.

24 Q. That's not my question.

25 A. Okay.

1 Q. Were there any other drafts of this
2 report that you submitted?

3 MR. FORD: Object to the
4 form of the question.

5 And, again, same instruction.
6 To the extent you can answer, yes or no.

7 A. This -- yeah, this is the only -- this
8 is the only report I submitted.

9 Q. Okay. Did you sit down and write this
10 report at once?

11 A. No.

12 MR. FORD: Object to the
13 form of the question.

14 Q. Were there different versions of this
15 report?

16 MR. FORD: Same objection.

17 Just answer yes or no to the
18 extent you understand.

19 A. This is -- this is the report.

20 Q. That's not my question.

21 A. There are no other versions of the
22 report.

23 Q. I'm sorry?

24 A. This is the report.

25 Q. When did you write the report?

1 A. I wrote the report -- again, I was -- I
2 was retained to prepare a report. So after being
3 retained, I worked on the report. And during the
4 time that I was retained, I wrote the report.

5 Q. Did you just write one report?

6 MR. FORD: Object to the
7 form of the question.

8 Yes or no if you understand the
9 question.

10 A. This is the only report that I have in
11 this case.

12 Q. Are there -- there are no drafts of the
13 report?

14 MR. FORD: Same objection.
15 Same instruction.

16 A. Yeah. I don't -- I'm not -- sorry. I'm
17 not trying to be difficult. I just don't
18 understand what you're -- this is -- this is the
19 report.

20 Q. Do you understand what a draft is?

21 A. Maybe would -- could you explain to me
22 what you mean by "draft"?

23 Q. Why don't you tell me what you
24 understand the word "draft" to mean in terms of a
25 report?

1 MR. FORD: Object to the
2 form of the question.

3 A. Yeah. I'm -- I'm sorry. I don't --
4 again, I don't -- I'm not sure what you're
5 referring to when you say "draft" --

6 Q. Were there --

7 A. -- "of the report."

8 Q. Was this the sole report that you used
9 and drafted in this case?

10 MR. FORD: Object to the
11 form of the question.

12 Same instruction.

13 A. Yeah. This is the only report that I
14 provided in this case.

15 Q. Okay. Do you -- do you have another
16 version of this report?

17 MR. FORD: Object to the
18 form of the question.

19 To the extent you can answer,
20 yes or no.

21 A. This is the only version of the report.

22 Q. Okay. So did you write this report in
23 one sitting?

24 A. No.

25 Q. Okay. Were there different parts of the

1 report that you wrote prior to submitting this
2 report?

3 MR. FORD: Object to the
4 form of the question.

5 A. Yes.

6 Q. Okay. Where are those parts of the
7 report?

8 MR. FORD: Object to the
9 form of the question.

10 A. I wrote all of the parts to the report
11 before submitting it.

12 Q. Okay. Did you draft this in Word
13 document?

14 A. Yes.

15 Q. Okay. When you started drafting the
16 Word document, did you have another version of the
17 document in Word?

18 MR. FORD: Object to the
19 form of the question.

20 Yes-or-no answer to the extent
21 you understand the question.

22 A. I don't know what you mean by "version."

23 Q. Can you walk me through how you drafted
24 the document in Word?

25 A. So --

1 MR. FORD: Object to the
2 form of the question.

3 To the extent you can answer
4 that without discussing your
5 conversations with counsel, please limit
6 your answer just to...

7 A. So when -- when I draft a --

8 Q. Okay. So you do know what the word
9 "draft" is. Okay.

10 MR. FORD: No, no. I'm
11 sorry, Counsel, please don't
12 interrupt him. Let him finish his
13 answer.

14 MS. GUERRIER: Sure.

15 A. You used "draft" as a noun. I just used
16 it as a verb.

17 Q. Okay.

18 A. So it's -- there's a distinction there.

19 Q. Mm-hmm.

20 A. So when I draft something, I usually put
21 together -- write something and then may add to it
22 and then edit it.

23 Q. Okay.

24 A. And re-edit it.

25 Q. So did you do -- did you do any of those

1 steps when drafting this report?

2 A. Yes.

3 Q. Okay. Did you -- when did you put
4 something together, as you just stated, regarding
5 this report?

6 MR. FORD: Object to the
7 form of the question.

8 Mischaracterizes the testimony.

9 A. Can -- can you be more specific?

10 Q. I'm using the word that you used. You
11 said that when you draft something, you usually
12 put something together.

13 A. Right.

14 Q. So -- and you stated that you followed
15 these steps for this report.

16 So when did you first put this report
17 together?

18 MR. FORD: Object to the
19 form of the question.

20 Mischaracterizes the testimony.

21 A. Yeah. I -- I don't recall the exact
22 date when I started drafting the report.

23 Q. Okay. And did you do any edits on the
24 report that you started drafting?

25 A. Yes.

1 Q. Can you describe whether you saved these
2 edits to Word?

3 MR. FORD: Object to the
4 form of the question.

5 Answer that yes or no to the
6 extent you understand it.

7 A. Can you repeat it?

8 Q. Can you describe whether you saved these
9 edits that you made to the report to Word?

10 MR. FORD: Same objection.
11 Same instruction.

12 A. Yes, I saved edits.

13 Q. Okay. Did you have a name for the
14 document when you drafted it on -- in Word?

15 MR. FORD: Object to the
16 form of the question.

17 And, again, just a yes-or-no
18 answer to the extent you understand the
19 question.

20 A. Yes.

21 Q. Okay. Were you saving over the same
22 document when you made edits to the document?

23 MR. FORD: Object to the
24 form of the question.

25 Just answer yes or no to the

1 extent you understand it.

2 A. I did save over the same document when
3 making edits.

4 Q. Okay. So did you not save a separate
5 document when you made edits to the document?

6 MR. FORD: Object to the
7 form of the question.

8 A yes-or-no answer to the
9 extent you understand.

10 A. Yeah. I made -- I made edits to the
11 document without saving it as a different file.

12 Q. Okay. So from the time that you started
13 writing the document until your final product, did
14 you just have one Word document?

15 A. No.

16 MR. FORD: Sorry. Sorry.
17 Give me a second.

18 Q. So how many --

19 MR. FORD: Counsel, let me
20 object to the form of the question.

21 And thank you for keeping your
22 answer yes or no, but please do keep your
23 answers to yes or no.

24 BY MS. GUERRIER:

25 Q. How many Word documents of the report

1 exist?

2 A. I don't know.

3 Q. Okay. Less than five?

4 MR. FORD: Object to the
5 form of the question.

6 A. I -- I would have to go back and count.

7 I don't -- I don't know.

8 Q. Would those be drafts of the document --
9 the report that you saved --

10 MR. FORD: Object to the --

11 Q. -- to Word?

12 MR. FORD: Object to the
13 form of the question.

14 A. Yes.

15 Q. Okay. So there were drafts of the
16 report that you prepared?

17 MR. FORD: Object to the
18 form of the question.

19 Just a yes-or-no answer if you
20 understand the question.

21 A. Yeah.

22 Q. Is the answer yes?

23 A. There were --

24 MR. FORD: Again, just yes
25 or no answers to these questions.

1 A. Yeah. It -- yeah. Can you repeat the
2 question? Because -- yeah.

3 Q. Well, did -- you testified that there
4 were different versions of the Word document that
5 you prepared. And -- and I'm talking about your
6 report.

7 MR. FORD: So, yeah, again,
8 object to the form of the question.

9 If you understand the question,
10 please answer yes or no.

11 MS. GUERRIER: That's not a
12 proper objection, "if you
13 understand." You can object to the
14 form, but you should not be
15 inserting, you know, cues and words
16 into these questions. So that's
17 improper. I'm going to ask you to
18 please just keep your questions (sic)
19 to the form.

20 MR. FORD: That's not an
21 objection.

22 MS. GUERRIER: Your
23 objections to the form.

24 MR. FORD: That's an
25 instruction to the witness on

1 privilege. And I'm permitted to
2 instruct the witness on --

3 MS. GUERRIER: You're
4 not instructing --

5 MR. FORD: -- privilege
6 however I want.

7 MS. GUERRIER: You did not
8 instruct the witness on privilege.
9 You are telling him if he
10 understands. That's not a privilege
11 objection.

12 MR. FORD: It -- it is a
13 privilege objection.

14 MS. GUERRIER: It is not.

15 MR. FORD: You don't
16 understand it to be a privilege
17 objection. I'll put on the record
18 that my instructions were for --

19 MS. GUERRIER: You should --

20 (Indiscernible cross talk;
21 reporter requests one speaker.)

22 MR. FORD: For privilege
23 purposes, to the extent you
24 understand the question, please
25 answer only yes or no. That's the

1 instruction.

2 MS. GUERRIER: Okay.

3 BY MS. GUERRIER:

4 Q. So how many times did you save the
5 report to Word?

6 MR. FORD: Object to the
7 form of the question.

8 A. Yeah. That's -- I type, if I take a
9 break, I push control S. And that happens. Type,
10 control S, type, control S. I don't want to lose
11 a file. So I have no idea how many times I save
12 that to the system.

13 Q. Well, did you testify that you --

14 MR. FORD: Counsel, will you
15 please let him finish --

16 Q. Did you --

17 MR. FORD: -- him answer
18 before you ask another question?

19 Q. Did you testify that you had five
20 documents that you created in Word?

21 MR. FORD: Object to the
22 form of the question, the
23 characterization of the testimony.

24 A. I'm -- I'm pretty sure I did not testify
25 I had five.

1 (Pause)

2 Q. Okay. I asked you "From the time you
3 started writing the document until your final
4 product, did you have just one Word document?"
5 And your answer was no.

6 So do you recall how many Word documents
7 that you had before this report?

8 A. No.

9 MR. FORD: Object to the
10 form of the question.

11 Q. Okay. Did you receive any comments from
12 counsel regarding the report that you drafted?

13 MR. FORD: Object to the
14 form of the question.

15 And just answer this yes or no
16 to the extent you can answer.

17 A. Yes.

18 Q. Who did you receive those comments from?

19 MR. FORD: Object to the
20 form of the question.

21 And just provide names to the
22 extent you remember.

23 A. Debevoise and then attorneys at Kellogg
24 Hansen.

25 Q. Okay. Did you save any of the comments

1 that you received from the attorneys onto your
2 Word document?

3 MR. FORD: Object to the
4 form of the question.

5 Same instruction: Yes or no.

6 A. Will you repeat -- will you repeat that?

7 Q. Did you save any of the comments that
8 you received from the attorneys in this case onto
9 your report?

10 MR. FORD: Object to the
11 form of the question.

12 And, again, to the extent you
13 can answer, yes or no.

14 A. Yes.

15 Q. Okay. And are those comments reflected
16 in the final report that you provided in this
17 case?

18 MR. FORD: Object to the
19 form of the question.

20 To the extent you can answer...

21 A. I -- I received comments and would have
22 considered the comments in drafting the report.

23 Q. Well, you stated that you saved some
24 of the comments onto your report. Is that
25 accurate?

1 MR. FORD: Object to the
2 form of the question, the
3 characterization of the testimony.

4 A. What -- I'd have to go back. Can you
5 read -- can you read that portion of the
6 testimony?

7 Q. Sure.

8 The question was: "Did you save any of
9 the comments that you received from the attorneys
10 in this case onto your report?"

11 And the attorney objected and you
12 answered "Yes."

13 A. Okay.

14 Q. So did the comments make it to the final
15 report that you submitted in this case?

16 MR. FORD: Object to the
17 form of the question.

18 A. Read your first question again.

19 Q. Did you save any of the comments that
20 you received from the attorneys in this case onto
21 your report?

22 A. And -- and then --

23 MR. FORD: Sorry. Object to
24 the form of the question.

25 Q. Your answer was yes.

1 A. Okay.

2 Q. And my question is: Did the comments
3 make it into the final report that you submitted
4 in this case?

5 MR. FORD: Object to the
6 form of the question.

7 A yes-or-no answer to the
8 extent you understand.

9 THE WITNESS: Okay.

10 A. I think I answered that I received
11 comments and I took comments into account in
12 drafting the report.

13 Q. My question is: Did the comments make
14 it into the final report that you submitted in
15 this case?

16 MR. FORD: Object to the
17 form of the question. Asked and
18 answered.

19 A. Yeah. Yeah. I said I took comments
20 into account in drafting the report.

21 Q. My question is: Did the comments make
22 it onto the final report that you submitted in
23 this case?

24 MR. FORD: Object to the
25 form of the question. Asked and

1 answered.

2 A. There -- yeah.

3 Q. Is that a yes?

4 MR. FORD: Sorry, Counselor.

5 Same objection.

6 A. Yeah. So what did I say? I received
7 comments, I considered the comments, and I drafted
8 the report. Right? Are those the three things
9 that I've said?

10 Q. Actually you stated that you saved the
11 comments in this case to your report.

12 A. Okay.

13 Q. So my question is, are these -- did the
14 comments make it into the final version that you
15 submitted in this case?

16 MR. FORD: Object to the
17 form of the question and to the
18 characterization of the testimony.
19 Asked and answered.

20 A. I don't -- I don't know if I have
21 anything else to answer on that.

22 Q. Well, you have to answer the question,
23 sir.

24 Did the comments make it into your
25 report, the final report that you submitted in

1 this case?

2 MR. FORD: Object to the
3 form of the question and to the
4 characterization of the testimony.

5 Asked and answered.

6 A. So I received comments. I considered
7 them in drafting the report.

8 Q. Did you include them in the final report
9 that you submitted in this case?

10 MR. FORD: Object to the
11 form of the question.

12 To the extent you can answer,
13 answer that yes or no.

14 A. I can answer the way I answered. I
15 received comments. I took them into consideration
16 in drafting the report.

17 Q. So are you not answering the question of
18 whether the comments that you received are
19 included in the final version of your report?

20 A. I --

21 MR. FORD: Object -- sorry.

22 Object to the form of the question
23 and to the characterization of the
24 testimony.

25 You can answer however you

1 want.

2 A. Yeah. I think I've answered that
3 question.

4 Q. You have not answered the question. You
5 have not answered whether the comments that you
6 received are included in the final report that you
7 submitted in this case.

8 MR. FORD: There isn't a
9 question pending.

10 MS. GUERRIER: There is a
11 question pending and he needs to
12 answer the question. You can't
13 instruct him not to answer.

14 MR. FORD: That wasn't a
15 question.

16 MS. GUERRIER: That is a
17 question.

18 MR. FORD: What's the
19 question?

20 MS. GUERRIER: Can you
21 please read the last question that I
22 asked the witness?

23 (Whereupon, the record was read
24 back.)

25 A. I don't --

1 MR. FORD: Object to the
2 form to the extent that's a question.

3 A. Yeah. I don't hear the question in
4 that --

5 Q. The question --

6 A. -- in that comment.

7 Q. -- is: Are the comments that you
8 received from counsel included in the report that
9 you submitted in this case?

10 MR. FORD: Object to the
11 form of the question. Asked and
12 answered.

13 A. Yeah. So I -- I may not understand what
14 you mean by "included" in the report.

15 Q. Did you include -- do you know what --
16 what -- do you understand what the meaning of
17 "include" is?

18 MR. FORD: Object to the
19 form of the question.

20 A. I mean, I have a general understanding
21 of the word "include." I -- I don't know if it
22 has one definition.

23 Q. Did you take any of the comments that
24 were provided by counsel and include those
25 comments in your report?

1 MR. FORD: Object to the
2 form of the question.

3 A. So my -- based on my understanding of
4 "include," I -- I received comments and I took
5 those comments into consideration in drafting the
6 report.

7 Q. So is the answer yes?

8 MR. FORD: Object to the
9 form of the question. Asked and
10 answered.

11 A. Under -- under my -- under what I
12 understand "include" to mean?

13 Q. Yes.

14 A. Yes.

15 Q. Okay. Is there any language in your
16 report that are not your words?

17 A. No.

18 MR. FORD: Object to the
19 form of the question.

20 Q. Is there any language in your report
21 that were written by counsel?

22 MR. FORD: Object to the
23 form of the question.

24 A. I don't know.

25 Q. You don't know?

1 A. Yeah.

2 Q. Why don't you know?

3 A. I would have to -- as I said, I received
4 comments and took those comments into
5 consideration.

6 Q. Okay. So is there any part of your
7 report where there are sections that were written
8 by counsel?

9 MR. FORD: Object to the
10 form of the question.

11 A. Yeah. I -- I don't re -- I -- I don't
12 think counsel would have written any section in
13 this report.

14 Q. Is there anything in the report that's
15 written by counsel?

16 MR. FORD: Object to the
17 form of the question. Asked and
18 answered.

19 A. Yeah. So that's a hard -- a hard
20 question. I mean, counsel would have written -- I
21 mean, he uses words like "and" and "the," right,
22 for example? So they probably have written those
23 words.

24 MR. FORD: I'm going to
25 instruct you not to get into the

1 drafting process in the report.

2 THE WITNESS: Okay.

3 MR. FORD: If you can answer

4 these questions yes or no --

5 THE WITNESS: Mm-hmm.

6 MR. FORD: -- you can answer

7 them yes or no.

8 BY MS. GUERRIER:

9 Q. So --

10 A. Ask the question again.

11 Q. -- when you say -- I'll -- I'll ask
12 another question.

13 When you say words such as "and" and
14 "the" that they probably wrote in your report, is
15 there anything else that counsel wrote in your
16 report?

17 MR. FORD: Object to the
18 form of the question.

19 A. I mean, the -- the re -- the report is
20 mine. Right?

21 Q. I don't know. I'm asking you --

22 A. The report is mine.

23 Q. -- who wrote the -- if counsel wrote
24 anything in the report.

25 MR. FORD: Object to the

1 form of the question. Asked and
2 answered.

3 A. Yeah. I -- I mean, the report is mine.

4 Q. That's not my question, sir.

5 My question is: Did counsel write any
6 part of your report?

7 MR. FORD: Object to the
8 form of the question. Asked and
9 answered. That is his answer.

10 Q. Can you answer the question?

11 A. I can't answer.

12 MR. FORD: Object to the
13 form of the question.

14 Q. Did counsel write anything in your
15 report?

16 MR. FORD: Object to the
17 form of the question. Asked and
18 answered.

19 Q. You have to answer the question, sir.

20 A. The -- the -- the report is mine.

21 Q. That's not my question.

22 My question is: Did counsel write
23 anything in the report?

24 MR. FORD: Counselor, he
25 gave you an answer and at this point

1 you're badgering the witness by
2 asking him the same question it must
3 be a dozen times.

4 MS. GUERRIER: Well, if he's
5 not answering the question, I'm going
6 to ask him until he does.

7 MR. FORD: If you don't like
8 the answer that you're getting,
9 that's not --

10 MS. GUERRIER: We're not
11 going to do this on the record. I'm
12 sorry. But --

13 MR. FORD: But --

14 MS. GUERRIER: -- you are
15 allowed --

16 (Indiscernible cross talk;
17 reporter requests one speaker.)

18 MS. GUERRIER: Yes. You can
19 object to the form of my question,
20 but you cannot have speaking, ongoing
21 or -- you know, statements or
22 testimony on this record.

23 MR. FORD: You can't direct
24 the witness to answer you in a
25 certain way.

1 MS. GUERRIER: I'm not.

2 MR. FORD: The objection is
3 to form and that it's asked and
4 answered.

5 You can answer.

6 BY MS. GUERRIER:

7 Q. So is there anything in the report
8 that's written by counsel?

9 MR. FORD: Objection to the
10 form. Asked and answered.

11 A. There's nothing I can re -- that I can
12 point to that would have been written by counsel.

13 Q. Other than the "the" and "and" that you
14 claimed earlier --

15 A. Well, what --

16 Q. -- could have been written by counsel?

17 MR. FORD: Objection to the
18 form. Mischaracterizes the
19 testimony. Asked and answered.

20 A. I can't, and -- yeah. I can't recall.

21 Q. Okay. Were you asked for your opinion
22 on any topic that was -- that is not included in
23 your report by counsel?

24 A. No.

25 Q. Okay. All right. If you turn to your

1 report, does the Exhibit A that you provided
2 include your complete risumi?

3 MR. FORD: Object to the
4 form of the question.

5 A. I didn't hear a question.

6 Q. Does Exhibit A that you provided with
7 your report include your complete risumi?

8 MR. FORD: Object to the
9 form of the question.

10 A. I just want to...

11 So -- so the report says "Attached as
12 Exhibit A is my CV."

13 Q. Mm-hmm. Yes?

14 A. And I think you asked if it's my
15 complete risumi.

16 Q. Okay. So what's the difference between
17 a CV and your risumi?

18 A. I don't know.

19 Q. Okay. So is this a risumi that you've
20 submitted with your report?

21 A. This is the --

22 MR. FORD: Object to the
23 form of the question.

24 A. This is the CV that I submitted with the
25 report.

1 Q. What is your definition of "CV"?

2 A. I think -- so a CV would be something
3 like Exhibit A that includes professional
4 experience and publications.

5 Q. Okay. Are you making a distinction
6 between a CV and a risumi?

7 MR. FORD: Object to the
8 form of the question.

9 A. I don't know if there's a distinction.

10 Q. Okay.

11 A. "CV" is -- is the word that -- that I
12 use in the report.

13 Q. Is the CV that you've submitted
14 accurate?

15 A. It -- it's accurate to the best of my
16 knowledge.

17 Q. Okay. When was the CV created?

18 A. I think October 4th.

19 Q. October 4th of 2021?

20 A. Of 2021.

21 Q. Okay. Who created the CV?

22 A. I believe I created the CV.

23 Q. Are you for -- do you know this for
24 certain that you created the CV?

25 A. Counsel may have assisted with the

1 organization of the CV.

2 Q. Okay. Did you have a CV prior to
3 October 4th, 2021?

4 A. Yes.

5 Q. And is the CV that's attached to your
6 report the same as the one that you had prior to
7 October 4th, 2021?

8 A. I believe the organization on this is
9 different. And this CV has publications for the
10 past ten years. It has some selected academic
11 presentations for the past -- past ten years. And
12 it has expert testimony for the past four years.
13 I -- that may differ from other CVs --

14 Q. Okay.

15 A. -- that I have that may provide
16 information extending beyond that period of time.

17 Q. Okay. So do you -- how many versions of
18 your CV do you have?

19 MR. FORD: Object to the
20 form of the question.

21 A. Yeah. Can you be more specific about
22 that?

23 Q. You stated that this may -- this CV
24 that's attached to your report may differ from
25 other CVs that you may have. So I'm asking how

1 many versions of your CV that you have.

2 MR. FORD: Object to the
3 form of the question.

4 A. Yeah. I don't -- I don't know.

5 Q. Prior to October 4th, 2021, when -- when
6 was the last time that you updated your CV?

7 A. I don't know.

8 Q. Do you recall the last time you drafted
9 a CV?

10 MR. FORD: Object to the
11 form of the question.

12 A. No.

13 Q. Okay. Is there anything in your other
14 CV that's not included in the Exhibit A that you
15 provided with your report which is your CV?

16 MR. FORD: Object to the
17 form of the question.

18 A. I believe so.

19 Q. What specifically is not included?

20 A. So --

21 MR. FORD: Object to the
22 form of the question. Sorry.

23 A. So the -- I don't know if I can be
24 specific. But the -- so the CV that's included in
25 the materials has publications for the past ten

1 years.

2 Q. Mm-hmm.

3 A. If you look at -- and my CV is posted on
4 the Brooklyn Law School website. If you looked at
5 it, for example, it doesn't stop with publications
6 for the past ten years and it may not include
7 every publication.

8 THE REPORTER: Include what
9 publication?

10 THE WITNESS: Every
11 publication.

12 BY MS. GUERRIER:

13 Q. Which CV may not include every
14 publication?

15 A. Well, Exhibit A goes back ten years.

16 Q. Okay.

17 A. So it wouldn't include every
18 publication. And the one on the Brooklyn Law
19 School website isn't limited to the past ten
20 years. So it may include other publications that
21 aren't on here --

22 Q. Okay.

23 MS. GUERRIER: Let me --

24 A. -- that also --

25 MS. GUERRIER: -- hand this

1 over to you. If you could give one
2 to the court reporter, please.

3 THE REPORTER: Exhibit 2.

4 MS. GUERRIER: Yes.

5 BY MS. GUERRIER:

6 Q. I've handed you what's been premarked as
7 Exhibit 2.

8 Do you recognize Exhibit 2?

9 A. Not that -- I believe the law school
10 maintains a list of articles and publications and
11 this appears to be that.

12 Q. Okay. So --

13 MR. FORD: Sorry. Just --
14 Counsel, just a question. It looks
15 like there's language at the bottom
16 of the page that "this site uses
17 cookies" that appears to be cutting
18 off some of the text on page 3, page
19 9, at least just from looking
20 through.

21 Is this the only version that
22 you have?

23 MS. GUERRIER: That's the
24 only version.

25 BY MS. GUERRIER:

1 Q. Okay. So have you seen this document
2 before, Professor?

3 A. No.

4 Q. Okay.

5 A. I don't think this is a document. I've
6 never seen this document. I think this is an
7 elec -- yeah. I think this is on the website
8 only, something --

9 Q. Okay.

10 A. -- that the law school doesn't print.

11 Q. Is this the BrooklynLaw.edu website?

12 A. Yes.

13 MR. FORD: Sorry. Object to
14 the form of the question.

15 Q. Okay. So --

16 A. Okay.

17 Q. So does this document on the first page
18 list your education and areas of ex -- of
19 expertise accurately?

20 A. It's -- it acc -- it accurately
21 identifies those areas as areas of expertise.

22 Q. Okay.

23 A. But there are -- it doesn't necessarily
24 list all areas of expertise.

25 Q. Okay. And how about your education?

1 Does it list your education accurately?

2 A. Yes.

3 MS. GUERRIER: Can you
4 please mark the document as Exhibit
5 2.

6 (Whereupon, exhibit is
7 presented and marked SEC Borden
8 Deposition Exhibit 2 for identification.)

9 THE REPORTER: Exhibit 2.

10 MS. GUERRIER: Yes.

11 BY MS. GUERRIER:

12 Q. Can you please tell us your post-high
13 school education?

14 A. Post-high school education?

15 Q. Yes.

16 A. I have a B.B.A. from Idaho State
17 University. And that was -- majored in
18 accounting.

19 Q. Mm-hmm.

20 A. An M.B.A. from Idaho State University
21 with an emphasis on accounting. And then a J.D.
22 from the University of Florida School of Law. And
23 an LL.M. in taxation from the University of
24 Florida School of Law.

25 Q. What year did you get your accounting

1 degree from -- yes. Your accounting degree in --
2 your B.B.A. in accounting, what year did you
3 obtain that?

4 A. That was 1995.

5 Q. Okay. And what year did you obtain your
6 M.B.A.?

7 A. 1996.

8 Q. What year did you obtain your J.D.?

9 A. 1999.

10 Q. And what year did you obtain your LL.M.
11 in tax?

12 A. 2000.

13 Q. Okay. Have you had any additional
14 educational training after your LL.M. in tax?

15 MR. FORD: Object to the
16 form of the question.

17 A. Yeah. Can you be more specific?

18 Q. Have you had any postgraduate education
19 after your LL.M. in tax?

20 A. I mean, I've done CLE and CP courses.

21 Q. Okay. Other --

22 A. Is that what you're talking about or --

23 Q. Any degrees after the LL.M. in tax?

24 A. No other degrees.

25 Q. Okay. So other than the CLE courses,

1 have you had any additional training after 2000 in
2 your field?

3 MR. FORD: Object to the
4 form of the question.

5 A. In my field? I've -- I think I've taken
6 two other -- two or three other college courses.

7 Q. What were those courses?

8 A. They were math related.

9 Q. Do you recall specifically what courses?

10 A. No.

11 Q. Do you recall when you took those
12 college courses?

13 A. I took them when we lived in Kansas.

14 Q. Do you recall what year?

15 A. No. We were there between 2004 and
16 2010. Somewhere in that range.

17 Q. You're currently employed as a professor
18 at Brooklyn Law School?

19 A. Yes.

20 Q. How long have you been employed at
21 Brooklyn Law School?

22 A. Since 2010.

23 Q. Are you tenured at Brooklyn Law School?

24 A. Yes.

25 Q. When did you receive your tenure?

1 A. I came to Brooklyn Law School with
2 tenure.

3 Q. You came with.

4 What classes do you currently teach at
5 Brooklyn Law School?

6 MR. FORD: Object to the
7 form of the question.

8 A. Yeah. So this semester I'm teaching
9 federal income tax. Actually not teaching it; we
10 had our last class on Monday.

11 Q. Is that the only class that you teach at
12 Brooklyn Law School?

13 A. This semester.

14 Q. Okay. What other courses have you
15 taught at Brooklyn Law School?

16 A. So I -- partnership taxation, taxation
17 in real estate transactions, and LLCs and
18 partnerships.

19 Q. Anything else?

20 A. No, I don't think so.

21 Q. Okay. Prior to Brooklyn Law School,
22 where did you work?

23 A. At Washburn University School of Law in
24 Topeka, Kansas.

25 Q. How long were you employed at Washburn

1 University School of Law?

2 A. From August of 2004 until 2010.

3 Q. Were you tenured at Washburn University
4 School of Law?

5 A. I received tenure.

6 Q. When did you receive tenure?

7 A. So I left in 2010, and that was the year
8 I was going through the tenure process. So I -- I
9 believe -- I know that the faculty at the law
10 school had voted for my tenure. And then
11 there's -- there's a process, right? So the
12 faculty votes for tenure. That happened. Then it
13 goes to the university and then the university,
14 something happens there administratively, and then
15 it goes to the university board is my
16 understanding.

17 So I think all of that happened before I
18 left in May of 2010.

19 Q. Okay. So when you left in May 2010, the
20 Washburn University -- sorry. I'll ask again.

21 When you left Washburn University School
22 of Law in May of 2010, were you tenured?

23 A. I -- I -- I'm not sure how it works
24 technically, everything that happened for -- for
25 me to have tenure, but it may have been effective

1 that fall and I was gone that fall. I was at
2 Brooklyn Law School that fall. So I -- yeah. It
3 may not -- the tenure may have been approved but
4 not become effective by the time I left.

5 Q. Okay. When did you -- I'm sorry.

6 Why did you leave your job at Washburn
7 University?

8 A. I left the job at Washburn University to
9 come to Brooklyn Law School.

10 Q. Okay. Do you recall what courses you
11 taught at Washburn University School of Law?

12 A. They're listed in my CV, in Exhibit A.

13 Q. Okay. Can you tell me what courses you
14 taught?

15 A. Absolutely. Tax policy seminar,
16 taxation of business entities, taxation of
17 individual income, taxation of corporations and
18 shareholders, taxation of partnerships and
19 partners.

20 Q. Anything else?

21 A. I -- I believe that was it.

22 Q. Prior to working at Washburn University
23 School of Law, where did you work?

24 A. I was in private practice in San
25 Antonio.

1 Q. And what kind of employment were you
2 doing in San Antonio?

3 A. I was a -- a tax associate at a law
4 firm.

5 Q. What was the name of the law firm?

6 A. Oppenheimer Blend Harrison & Tate, Inc.

7 Q. Do you recall what year you worked
8 there?

9 A. I started in 2000, is what I remember,
10 and then I left full-time employment in 2004. I
11 believe I remained of counsel with the firm after
12 leaving full time to go -- when we moved to Kansas
13 to go -- to teach at Washburn.

14 Q. What was the firm's area of practice?

15 A. The firm was a -- a commercial law firm.

16 Q. What did you specifically -- what -- I'm
17 sorry.

18 What type of work did you specifically
19 do at the firm?

20 A. Federal income tax.

21 Q. In what context did you do the federal
22 income tax work?

23 A. It was generally in the property
24 transaction context.

25 Q. Any other type of work at the firm?

1 A. It's been a long time. I -- I might
2 have done some corporate work. I might have done
3 something related to estates and trusts.

4 Q. So prior to Oppenheimer, Blend, Harris,
5 where did you work?

6 A. That was my first job out of law school.

7 Q. So other than the employment that we
8 discussed today, did you work anywhere else after
9 you graduated from college?

10 MR. FORD: Object to the
11 form of the question.

12 A. After I graduated from college, I
13 started at Oppenheimer, Blend, Harrison & Tate. I
14 went to Washburn University, then Brooklyn Law
15 School. And then I've -- I've done of counsel
16 work and then I have my own practice.

17 Q. Okay.

18 MR. FORD: Counsel, if we're
19 going to leave this document, we've
20 been going for about an hour, is it a
21 good time to take a break?

22 MS. GUERRIER: Can I ask one
23 question so we can just break off
24 at --

25 MR. FORD: Okay.

1 BY MS. GUERRIER:

2 Q. All right. What kind of practice do you
3 have?

4 A. It's a -- it's a tax law practice.

5 Q. Okay. What is the name of your
6 practice?

7 A. Bradley T. Borden, PLLC.

8 Q. And what kind of tax law do you do at
9 the company?

10 A. It's transactional.

11 Q. Can you explain what you mean by
12 "transactional"?

13 A. Yeah. It's -- it's people buying and
14 selling property.

15 Q. What type of property?

16 A. It varies.

17 Q. Okay. So can you give me some examples?

18 A. Yeah. Real property.

19 Q. Okay. Any other type of property?

20 A. Interest in corporations.

21 Q. Okay. Anything else?

22 A. Interest in partnerships.

23 Q. Anything else?

24 A. Well, when you get into real property,
25 there are leases.

1 Q. Anything else?

2 A. There -- there are contracts and -- and
3 options.

4 Q. Is this a practice that you're doing now
5 with the Brooklyn Law School work?

6 A. It's --

7 MR. FORD: Object to the
8 form of the question.

9 A. So I'm -- I'm a professor at Brooklyn
10 Law School and I also have an advisory practice
11 work. Yeah.

12 Q. What percentage of your time do you
13 spend at the advisory practice?

14 A. I don't -- I don't know.

15 Q. Okay. How often do you teach classes at
16 Brooklyn Law School?

17 A. So this semester I had classes twice a
18 week.

19 Q. Prior to this semester, what was your
20 time spent at Brooklyn Law School teaching
21 classes?

22 A. So I -- I teach -- usually I teach
23 two -- one class in the fall and I teach two
24 classes in the spring.

25 Q. Okay. Has this been the case since you

1 started working there in 2010?

2 A. I -- I took a sabbatical one semester
3 and it seems like I was asked to teach another
4 class one semester. So I might have had either
5 three courses one semester or, like, a fall with
6 two.

7 Q. Okay. And is your tax practice a
8 full-time job?

9 A. I don't think so.

10 Q. How many hours a week do you work at
11 your tax practice?

12 A. It depends. There's not, like, fixed
13 hours.

14 Q. Okay. Is it less than 40 hours?

15 A. It -- it -- it depends.

16 Q. Okay.

17 A. I mean, I don't mean to -- yeah. I
18 mean, if there's -- if there's work, then it could
19 be -- it could be 40 hours or more.

20 Q. Okay.

21 A. If there's less work, then it could be,
22 you know, a few hours or not -- or no hours at
23 all.

24 Q. Okay.

25 MS. GUERRIER: We can take a

1 break now.

2 How long did you want?

3 MR. FORD: Oh, just 10, 15
4 minutes.

5 MS. GUERRIER: Sure.

6 MR. FORD: Come back at
7 11:35.

8 MS. GUERRIER: That's fine.

9 THE VIDEOGRAPHER: The time
10 on the video monitor is 11:25. End
11 of Media Unit Number 2, going off the
12 video.

13 (Whereupon, a recess is taken.)

14 THE VIDEOGRAPHER: The time
15 on the video monitor is now 11:43
16 p.m. (sic). Start of Media Unit
17 Number 3. Back on the video record.

18 BY MS. GUERRIER:

19 Q. Professor, are all of your memberships
20 and professional organizations listed in your
21 report?

22 MR. FORD: Object to the
23 form of the question.

24 A. I don't -- so there's -- what do we have
25 here? So the report itself, paragraph 4, talks

1 about I was the past chair of the Sales, Exchange
2 and Basis Committee of the American Bar
3 Association Section of Taxation.

4 THE REPORTER: You're going
5 to have to slow down when you're
6 reading.

7 THE WITNESS: Yeah. Sorry
8 about that. Yeah.

9 THE REPORTER: Repeat.

10 A. So as it says, I was the past chair of
11 the Sales, Exchanges and Basis Committee of the
12 American Bar Association Section of Taxation.

13 I am currently or formerly a member of
14 the following professional organizations: The
15 American College of Tax Counsel, the New York
16 State Bar Association, the New York City Bar
17 Association, the Texas Bar Association and the Tax
18 Forum. I'm also American of the -- also a fellow
19 of the American Bar Foundation.

20 And then there -- if we go to the CV, it
21 looks like the CV, I believe, so far lists all of
22 those.

23 I'm trying to think if there's any,
24 so -- yeah. It goes back. What -- so these are
25 professional organizations that I have been a

1 member of or am currently a member of. There are
2 probably some that aren't on there that I've been
3 a member of.

4 Q. Do you know what they are?

5 A. I don't know if I can recollect.

6 There's -- there -- down below they have -- you
7 asked about professional organizations --

8 Q. Yes.

9 A. -- specifically?

10 Texas Bar Association. In Texas I might
11 have been a member of the -- the CPA association,
12 whatever it's called.

13 Q. Okay.

14 A. I don't know. New York State -- so,
15 yeah, this doesn't have the New York -- it doesn't
16 have New York City or New York County.

17 Q. What specifically for New York City?

18 A. Yeah, sorry. The New York -- the New
19 York City -- I think it's the New York City Bar
20 Association and the New York County, the law
21 association. I don't know if I remember the exact
22 names of those.

23 Q. Anything else?

24 A. Nothing else comes to mind.

25 Q. Okay. Have you ever had any complaints

1 filed against you at any of the professional
2 organizations that you belong to?

3 A. Not that I'm aware of.

4 Q. Okay. Are all of your professional
5 licenses listed in your report including the
6 appendix to the report?

7 A. So, licenses. New York, Texas, United
8 States Tax Court. Yeah, I can't think of -- I
9 don't think there are any others. It says Florida
10 CPA. Yeah.

11 Q. Are you a currently active CPA?

12 A. I'm -- so the CPA designation in Florida
13 I -- I put on inactive status. The CPA
14 designation in Texas is still active.

15 Q. Okay. When did you obtain your CPA
16 license?

17 A. In Florida I believe it was 1998.

18 Q. How about in Texas?

19 A. I believe 2001.

20 Q. Any other license that is not listed on
21 this Exhibit A?

22 A. Professional licenses?

23 Q. Professional licenses, yes.

24 A. I think the only other license I have is
25 a driver's license.

1 Q. Okay.

2 A. It does have a motorcycle certification.

3 Q. Okay. That's good.

4 A. That is good.

5 Q. Have you ever been disciplined by any of
6 the -- the organizations that issued you a
7 professional license?

8 A. Not -- no.

9 Q. Okay. Have any of your professional
10 licenses ever been revoked?

11 A. No.

12 Q. Have they been suspended at any time?

13 A. No.

14 Q. Okay. Have you ever applied for a
15 professional license that was denied?

16 A. I don't think so. I think these are the
17 only ones I've applied for.

18 Q. Okay. Now, can you tell me what your
19 area of expertise is in your profession?

20 A. Sure.

21 MR. FORD: Sorry. Object to
22 the form of the question.

23 A. Yeah. So I'm a -- a tax law professor.
24 And then transactional tax classification of -- of
25 property for federal income tax purposes is -- is

1 an area that I have, sort of, particular
2 expertise.

3 Q. Anything else?

4 A. I think if we look at the -- the CV, you
5 can see that some of the -- a lot of the
6 publications relate to tax, but there are some
7 that relate to partnerships and LLCs.

8 Q. So are you claiming an expertise in
9 partnerships and LLCs?

10 MR. FORD: Object to the
11 form of the question.

12 A. I'm a -- I mean, I'm a co-author of --
13 of a treatise called "Limited Liability Entities:
14 State by State Guide to LLCs, LPs and LLPs."

15 Q. Mm-hmm.

16 A. So it's a -- it's a ten-volume treatise
17 that I'm a co-author on.

18 And then there's also another book in
19 here, "LLCs and Partnerships."

20 And then a number of -- it looks like
21 there was at least -- there -- there's probably
22 more than that, but there's a Law Review article
23 there, "Interest Dilution as a
24 Contribution-Default Remedy in LLCs and
25 Partnerships." So I do have expertise in that

1 area as well.

2 Q. Okay. Anything else?

3 A. So what did I say? Federal income tax
4 and partnerships and LLCs. I -- that -- I mean,
5 that would be -- that would be the -- those would
6 be the primary areas for sure.

7 Q. Okay. Do you consider yourself an
8 expert in the taxation of digital -- federal
9 taxation of digital assets?

10 MR. FORD: Object to the
11 form of the question.

12 A. So I -- I -- I do consider myself an
13 expert regarding the -- the classification of
14 virtual currency such as XRP for federal income
15 tax purposes.

16 Q. Has any court ever qualified you as an
17 expert in the federal taxation of virtual
18 currency?

19 A. Not that I'm aware of.

20 Q. What is the basis for your claim that
21 you have -- you are an expert in the
22 classification of virtual currency for federal tax
23 purposes?

24 MR. FORD: Object to the
25 form of the question.

1 A. So I have a -- a general expertise in
2 the federal income tax classification of property.
3 And virtual currency such as XRP is -- is a type
4 of property.

5 Q. Did you have a specific example of when
6 you were determined an expert in the
7 classification of virtual currency --

8 MR. FORD: Object to the
9 form of the question.

10 Q. -- for tax purposes?

11 MR. FORD: Sorry.

12 A. Yeah. In this case I've been hired as
13 an expert in that area.

14 Q. Other than this case, have you been --
15 ever been hired as an expert in the classification
16 of virtual currency for federal tax purposes?

17 A. No.

18 Q. Has any court ever qualified you as an
19 expert in the area of federal taxation of digital
20 assets?

21 MR. FORD: Object to the
22 form of the question.

23 A. Yeah. I'm not sure what it means to be
24 qualified by a court as an expert witness.

25 Q. Have you ever testified as an expert

1 in -- regarding the federal taxation of digital
2 assets?

3 MR. FORD: Object to the
4 form of the question.

5 A. This is -- can you -- can you be more --
6 the answer is no.

7 Q. Okay. In general, has any court ever
8 qualified you as an expert in any subject matter?

9 MR. FORD: Object to the
10 form of the question.

11 A. Yeah. I'm not sure what it means for a
12 court to qualify me as an expert.

13 Q. Has the court ever accepted your report
14 in any case that you've been retained as an expert
15 in?

16 MR. FORD: Object to the
17 form of the question.

18 A. Yeah. I -- I don't know.

19 Q. Do you know if you've ever failed to
20 qualify as an expert by a judge in any case?

21 MR. FORD: Object to the
22 form of the question.

23 A. No.

24 Q. Have you received any educational
25 training in the federal taxation of digital

1 assets?

2 MR. FORD: Object to the
3 form of the question.

4 A. So I have a -- I have a CPA. I took --
5 I have, as we talked about, a bachelor's degree in
6 accounting. So I took tax courses there. I have
7 an LL.M. in accounting. And I have written
8 extensively about federal income taxation of
9 property transactions and classification of
10 property.

11 Q. Okay. So the CPA that -- have you ever
12 had a CPA course regarding digital assets?

13 MR. FORD: Object to the
14 form of the question.

15 A. I have been to conferences where that
16 taxation -- I use the term "virtual currency," so
17 I'm going to use that -- that -- that -- that
18 language here. But I've been to courses where
19 there has been discussion -- CLE courses where
20 there's been discussions of virtual currency.

21 Q. Did you conduct the CLE courses where
22 there've been discussions of virtual currency?

23 MR. FORD: Object to the
24 form of the question.

25 A. Can you say a little bit more about what

1 you mean by "conduct"?

2 Q. Were you the one giving the course on
3 the virtual currency?

4 A. No.

5 Q. Okay. Other than the CLE course that
6 you attended where there was a discussion about
7 virtual currency, did you have any other courses
8 regarding virtual currency?

9 MR. FORD: Object to the
10 form of the question.

11 A. I don't think so.

12 Q. How about digital assets in general?
13 Did you have any courses regarding digital
14 assets --

15 MR. FORD: Objection.

16 Q. -- other than virtual currency?

17 MR. FORD: Sorry. Object to
18 the form of the question.

19 A. Not that I know of.

20 Q. You talked about your LL.M.
21 Did you have a course in your LL.M.
22 classes -- all to -- your LL.M. program regarding
23 digital assets?

24 MR. FORD: Object to the
25 form of the question.

1 A. Not that I recall.

2 Q. When did you graduate?

3 A. 2000.

4 Q. Would there have been a course about
5 digital assets in your LL.M. in -- in the 2000
6 era?

7 MR. FORD: Object to the
8 form of the question.

9 A. I don't know.

10 Q. Were digital assets in existence in
11 2000?

12 A. I don't know.

13 MR. FORD: Object -- sorry.
14 Object to the form of the question.

15 Q. Okay. Now, you have an accounting
16 degree?

17 A. Yes.

18 Q. Did you take any courses when you were
19 doing your accounting degree on digital assets?

20 A. Not that I re --

21 MR. FORD: Object to the
22 form of the question.

23 A. Not that I recall.

24 Q. In your tax practice, have you provided
25 any service with regards to the federal taxation

1 of digital assets?

2 MR. FORD: Object to the
3 form of the question.

4 A. Yeah. I've -- I -- I think I've never
5 been hired to provide advice with respect to
6 virtual currency.

7 Q. Do you understand a virtual currency to
8 be a digital asset?

9 MR. FORD: Object to the
10 form of the question.

11 A. So "virtual currency" is a -- it's a
12 term that's defined and used by the IRS. And so
13 that's a firm -- a term I'm familiar with.

14 Q. How are you defining the term "virtual
15 currency"?

16 A. I'm -- I'm using the IRS's definition of
17 virtual currency.

18 Q. Okay. We'll get to that shortly.

19 A. Yeah.

20 Q. Have you ever taught a class about the
21 federal taxation of digital assets?

22 MR. FORD: Object to the
23 form of the question.

24 A. Yeah. I'm not -- I don't know exactly
25 what digital assets is.

1 Q. Okay. Well, have you ever taught a
2 class about the federal taxation of virtual
3 currency?

4 A. I don't think so.

5 Q. Have you -- have you -- are you familiar
6 with the term "cryptocurrency"?

7 A. Yes.

8 Q. Have you ever taught a class about the
9 federal taxation of cryptocurrency?

10 A. No.

11 Q. Have you ever taught a class about the
12 federal taxation of similar types of virtual
13 currency or cryptocurrency?

14 MR. FORD: Object to the
15 form of the question.

16 A. It -- yeah. In -- in many ways virtual
17 currency is similar to property.

18 Q. That's not my question.

19 My question is: Do you have a specific
20 class that you've ever taught about virtual
21 currency?

22 MR. FORD: Object to the
23 form of the question.

24 A. Is that the -- yeah. Would you ask that
25 question again?

1 Q. Is there a specific class that you've
2 ever taught about virtual currency?

3 MR. FORD: Object to the
4 form of the question.

5 A. I don't recall ever specifically
6 covering virtual currency in a class.

7 Q. Okay. Any -- did you ever have a class
8 about bitcoin?

9 MR. FORD: Sorry. Object to
10 the form of the question.

11 A. Yeah. I don't recall ever teaching a
12 class about bitcoin.

13 Q. Have you ever taught a class about XRP?

14 A. No.

15 Q. Okay. Do you have an understanding of
16 the word "digital asset"?

17 MR. FORD: Object to the
18 form of the question. Asked and
19 answered.

20 A. Yeah. Virtual -- I use the term
21 "virtual currency" because, again, it's used by
22 the IRS. And so it's a -- it's a term that I am
23 familiar with that has some -- something of a
24 technical connotation.

25 Q. So --

1 A. Digital assets -- yeah. I don't have
2 the same understanding of what digital assets
3 means.

4 Q. Okay. So something that's not a virtual
5 currency but is -- do you know of anything other
6 than a virtual currency in that world?

7 MS. ZORNBERG: I'm sorry.

8 Can you keep your voice up? I -- I
9 can't hear you.

10 MS. GUERRIER: I'm sorry.

11 I'll repeat the question.

12 BY MS. GUERRIER:

13 Q. So with an asset that's not a virtual --
14 I'll repeat the question verbatim.

15 Something that's not a virtual currency,
16 but do you know of anything other than a virtual
17 currency in that world?

18 MR. FORD: Object to the
19 form of the question.

20 A. I -- so -- so my understanding is -- and
21 I'm going to frame it in -- in -- in terms of the
22 tax law. So we have the guidance from the IRS
23 that talks about virtual currency and then we also
24 have guidance from the IRS that says that
25 cryptocurrency is a subset of virtual currencies.

1 So that's...

2 Q. So other than virtual currency and
3 cryptocurrency, do -- are you aware of any other
4 type of similar assets?

5 MR. FORD: Object to the
6 form of the question.

7 A. I don't know if I understand the
8 question, but I -- I can read what virtual
9 currency is and then read that cryptocurrency is a
10 subclass or subset of a virtual currency.

11 Q. So is it your testimony today that you
12 don't know what a digital asset is?

13 MR. FORD: Object to the
14 form of the question.

15 A. I don't know what -- I don't know the
16 definition of -- hold on. I'm trying to think if
17 there's a context.

18 So I believe the term "digital asset"
19 was used in -- actually, let me not guess.

20 Yeah. So there -- there -- there was
21 legislation proposed regarding Section 6045 of the
22 Internal Revenue Code that uses the term "digital
23 asset."

24 Q. Do you have an understanding of what
25 that term means under that section of the --

1 MR. FORD: Sorry. Object to
2 the form of the question.

3 A. I -- I don't have the definition in
4 front of me.

5 Q. Okay. But have you heard of the term
6 "digital asset" before?

7 A. Yes.

8 Q. Okay. In what context did you hear of
9 the term "digital asset"?

10 A. Well, as I said, it was -- it was in
11 legislation that was proposed with respect to
12 Section 6045.

13 Q. Other than the context of proposed
14 legislation, have you heard of the term "digital
15 asset"?

16 A. I mean, I -- I suppose it showed up in
17 my just general reading the news --

18 Q. Okay.

19 A. -- and being a part of society, but I
20 don't have, like, a specific knowledge or
21 recollection of how that would have been used.

22 Q. Okay. Have you conducted any seminars
23 about the federal taxation of a virtual
24 currency?

25 MR. FORD: Object to the

1 form of the question.

2 A. So I've never specifically, that I
3 recall, addressed virtual currency in any talk
4 that I've given, any presentation that I've
5 given.

6 Q. Okay. And is it fair to say the same
7 for digital assets?

8 MR. FORD: Object to the
9 form of the question.

10 A. I don't recall using the term "digital
11 asset" in a presentation.

12 Q. Okay. Okay. So sitting here today, do
13 you have a working understanding of what the --
14 the term "digital asset" means?

15 MR. FORD: Object to the
16 form of the question. Asked and
17 answered.

18 A. Yeah. So -- so, again, I know "digital
19 asset" was used in proposed legislation under
20 Section 6045.

21 Q. Mm-hmm.

22 A. And I -- I believe it was defined in
23 that proposed legislation but I don't have that
24 definition.

25 Q. All right. If you turn to the

1 publications that you've listed for the last ten
2 years.

3 So have you listed all of your
4 publications in the last ten years in Exhibit A to
5 the report?

6 A. I believe so.

7 Q. Okay. Can you state all the articles
8 that you've published that specifically discuss
9 virtual currencies?

10 MR. FORD: Object to the
11 form of the question.

12 A. Yeah. I'm not aware of ever using the
13 term "virtual currency" in any publication.

14 Q. Have you ever published any articles
15 regarding cryptocurrencies?

16 MR. FORD: Object to the
17 form of the question.

18 A. Yeah. I'm not aware of ever using the
19 term "cryptocurrency" in a publication.

20 Q. Have you ever published any articles
21 regarding digital assets in general?

22 MR. FORD: Object to the
23 form of the question.

24 A. Yeah. I'm not aware of ever using the
25 term "digital assets" in a publication.

1 Q. All right. So going to the books that
2 you've published, have you ever published any book
3 that specifically discuss virtual currencies?

4 A. Not that it -- not that I'm aware of.

5 Q. Have you published any books that
6 discuss cryptocurrencies?

7 A. Not that I'm aware of.

8 Q. Have you published any books that
9 discuss digital assets?

10 MR. FORD: Object to the
11 form of the question.

12 A. Yeah. I'm not aware of using the term
13 "digital assets" in any book.

14 Q. Can you state any reviews that you've
15 published that specifically discuss digital
16 assets?

17 MR. FORD: Object to the
18 form of the question.

19 A. Yeah. I'm not -- I can't recall and I'm
20 not aware that I've ever used the term "digital
21 assets" in any publication.

22 Q. Have you ever published any reviews that
23 specifically discuss cryptocurrencies?

24 MR. FORD: Object to the
25 form of the question.

1 A. Yeah. I'm not totally sure what -- when
2 you say "review," are you referring to something
3 in particular?

4 Q. Any articles that -- any reviews that
5 you've done regarding cryptocurrencies.

6 A. Yeah --

7 MR. FORD: Object to the
8 form of the question.

9 A. I'm not aware of ever publishing
10 anything that used the word "cryptocurrency"
11 before.

12 Q. Okay. Have you ever published anything
13 about virtual currencies at all?

14 A. Well, I've never used -- I'm not -- I
15 don't recall ever using the word "virtual
16 currency" in a publication.

17 Q. Did you use a word that's similar to
18 virtual currency in any publication that have to
19 do with the virtual currencies that you -- the IRS
20 has defined that you referred to?

21 MR. FORD: Object to the
22 form of the question.

23 A. Yeah. Can -- yeah. There's -- there's
24 a -- I just want to be very specific in what I
25 heard you ask.

1 Can you ask it again?

2 Q. Yes. I'll ask a better question.

3 A. Okay.

4 Q. Have you ever published anything about
5 "virtual currencies" as you understand that term
6 to mean?

7 MR. FORD: Object to the
8 form of the question.

9 A. Yeah. I've never -- I've never used the
10 word "virtual currency" in a publication that I
11 can recall.

12 Q. Have you published anything about the
13 subject matter of virtual currencies?

14 MR. FORD: I'm sorry.
15 Object to the form of the question.

16 A. Yeah. So -- yeah. Yeah. I've -- I've
17 definitely published -- I definitely have
18 publications that talk about the taxation of
19 property transactions.

20 Q. Mm-hmm.

21 A. Yeah. So I'm just saying that -- would
22 that cover virtual currency? The answer is yes.

23 Q. That's not my question, though.

24 A. Okay.

25 Q. My question is specifically with regard

1 to the types of virtual currencies that you --
2 that you -- you claim the IRS defined.

3 A. Yeah.

4 Q. Have you published anything at all about
5 that subject matter?

6 MR. FORD: Object to the
7 form of the question. Asked and
8 answered.

9 A. So I've never -- I don't recall ever
10 using the word "virtual currency" in a
11 publication.

12 Q. Okay. So what percentage of your
13 publications concern property, real property?

14 MR. FORD: Object to the
15 form of the question.

16 A. Yeah. That would be -- that would be
17 very hard to quantify. I'm happy to walk
18 through --

19 Q. Would you --

20 A. -- the publications and --

21 Q. Okay.

22 A. -- talk about which ones are real
23 property and which ones aren't.

24 Q. No.

25 How about you -- do you think you can

1 give a percentage?

2 A. No.

3 MR. FORD: Sorry. Object to
4 the form of the question. Asked and
5 answered.

6 Q. Well, what percentage of your
7 publications concern the subject matter of digital
8 assets?

9 MR. FORD: Object to the
10 form of the question.

11 A. So none of them --

12 Q. Okay.

13 A. Yeah. None of them include -- as far as
14 I'm aware, none of them include the term "digital
15 asset."

16 Q. Okay. So going back to your -- the
17 publications that you listed in Exhibit A --

18 A. Mm-hmm.

19 Q. -- is it fair to say that nothing in
20 here includes any reference to virtual currencies
21 specifically?

22 MR. FORD: Object to the
23 form of the question.

24 A. It -- my -- I -- there's a lot of words
25 that are representative in -- in these -- in these

1 publications, right? So I've said that I don't
2 recall ever using the word "virtual currency" in a
3 publication.

4 Q. Okay. So in the Exhibit A to your
5 report --

6 A. Mm-hmm.

7 Q. -- is it fair to say that there's
8 nothing in here about virtual currency --

9 MR. FORD: Object --

10 Q. -- specifically?

11 MR. FORD: Object to the
12 form of the question.

13 A. The -- I'm not aware of the term ever
14 being used --

15 Q. Okay.

16 A. -- "virtual currency." I am not trying
17 to be difficult. I just don't know how it stands
18 with that.

19 Q. Okay. So it's not in your Exhibit A?

20 A. Exhibit A --

21 MR. FORD: Sorry. Object to
22 the form of the question.

23 A. Yeah. I have -- I don't recall ever
24 using the -- the term "virtual currency" in a
25 publication.

1 Q. Okay. And do you recall ever writing
2 anything about the subject matter of virtual
3 currency in any publication?

4 MR. FORD: Object to the
5 form of the question. Asked and
6 answered.

7 A. Yeah. I'm not sure what the -- the
8 distinction is between not using the term "virtual
9 currency."

10 Q. Well, I just want to make sure that I
11 understand what you're saying.

12 So is it that you've never even covered
13 the topic of virtual currency in any of your
14 publications?

15 A. I've --

16 MR. FORD: Sorry. Object to
17 the form of the question.

18 A. Yeah. I -- I -- I don't recall ever
19 using the term "virtual currency" in a
20 publication. I don't recall ever using the term
21 "digital asset" in a publication. I don't recall
22 ever using the term "cryptocurrency" in a
23 publication.

24 Q. Okay. Thank you.

25 A. Yeah.

1 Q. Have you listed all of the testimony
2 that you provided in the past four years --

3 A. Yes.

4 Q. -- in your report?

5 MR. FORD: Just let her
6 finish.

7 Q. So in the past four years, is it that
8 you've only provided one testimony?

9 A. Yes.

10 Q. And is that the Bernstein case that we
11 discussed earlier?

12 A. Yes.

13 Q. Okay. Now, prior to the past four
14 years, did you give any deposition testimony about
15 any cryptocurrency?

16 A. No.

17 Q. And prior to the past four years, did
18 you give any trial testimony regarding
19 cryptocurrency?

20 A. No.

21 Q. Did you give any deposition testimony
22 prior to the past four years regarding digital
23 assets in general?

24 MR. FORD: Object to the
25 form of the question.

1 A. So, again, I use -- "digital assets" is
2 a term that's a little bit more difficult to use.
3 It would be nice to have -- we don't have the --
4 the definition in front of us. But if we used
5 the -- the term in the proposed legislation, I
6 would say no.

7 Q. Okay. And prior to the past four
8 years, did you give any trial testimony regarding
9 any digital assets as you defined the term?

10 A. Yeah.

11 MR. FORD: Sorry. Object to
12 the form of the question.

13 A. No.

14 Q. Okay.

15 MR. FORD: Sorry. Can we
16 just take --

17 MS. ZORNBERG: No. Just
18 keep going.

19 MR. FORD: Never mind.

20 BY MS. GUERRIER:

21 Q. Okay. Can you describe the scope of
22 your assignment in this case?

23 A. So I was asked to offer an opinion on
24 these three questions that are presented in the
25 report.

1 Q. Okay. Can you just summarize the three
2 questions that you were asked to provide an
3 opinion on?

4 A. So --

5 MR. FORD: Object to the
6 form of the question.

7 A. First, I was asked whether -- I'm
8 probably going to read. It will be easier than
9 summarizing.

10 "Has authoritative guidance been issued
11 regarding the federal income tax classification
12 of virtual currency such as XRP?

13 "Does that or any other guidance
14 classify virtual currency such as XRP as a
15 security for federal income tax purposes?

16 And "From the perspective of federal
17 income tax law and focusing specifically on the
18 period prior to December 22nd, 2020, would a
19 reasonable buyer or seller expect virtual
20 currencies such as XRP to be classified as a
21 security for federal income tax purposes and
22 qualify for application of federal income tax
23 rules specific to securities?"

24 Q. Okay. Where in your report did you
25 describe the scope of the assignment that you were

1 provided in this case?

2 A. That is where I describe the scope of
3 it.

4 Q. What paragraph of the report?

5 A. I -- I believe that describes the -- I
6 think paragraph 8 --

7 Q. Okay.

8 A. -- describes the scope of it.

9 Q. All right.

10 A. Sorry.

11 Q. Did you review the complaint in this
12 case?

13 A. I --

14 MR. FORD: Sorry. Object to
15 the form of the question.

16 A. So Footnote 6 identifies the complaint
17 filed in SEC Ripple and then, also, the amended
18 complaint.

19 Q. Okay.

20 A. I -- I looked at those, that complaint
21 and the amended complaint.

22 Q. So are you familiar what this case is
23 about?

24 MR. FORD: Object to the
25 form of the question.

1 A. I have a very general understanding of
2 what the case is about.

3 Q. Can you tell me what your general
4 understanding of this case is?

5 A. Yeah. I'm -- it's that the SEC is
6 bringing an action against Ripple Labs, Inc.,
7 Bradley Garlinghouse, Christian A. Larsen, and
8 they're claiming that they offered and sold XRP
9 and that those XRP constitute investment
10 contracts and those offers and sells were
11 unlawful because they were not registered with the
12 SEC.

13 Q. Okay. Is the issue of XRP's federal tax
14 treatment one that you saw in the complaint?

15 MR. FORD: Object to the
16 form of the question.

17 A. Yeah. I -- again, I don't -- I didn't
18 study the complaint, read it thoroughly, but I
19 don't recall seeing any reference to federal
20 income tax in the complaint.

21 Q. Okay. So do you know whether XRP's
22 federal tax treatment is an issue before the court
23 in this case?

24 A. I do not.

25 MR. FORD: Object -- sorry.

1 Object to the form of the question.

2 Calls for a legal conclusion.

3 Q. Do you know why you were asked to
4 provide an expert opinion about the federal tax
5 treatment of virtual currency in this case?

6 MR. FORD: Object to the
7 form of the question.

8 To the extent you can answer
9 that without revealing any conversations
10 that you had with counsel, you can
11 answer, but otherwise I would direct you
12 not to answer.

13 A. Do you want to re -- reask the question?
14 Sorry.

15 Q. Yeah.
16 Do you know why you were asked to
17 provide an expert opinion about the federal tax
18 treatment of virtual currency in this case?

19 MR. FORD: Same objection
20 and same instruction.

21 A. Yeah. I -- I think -- I really don't
22 know.

23 Q. Do you know were you asked to provide --
24 I'm sorry.

25 Were you asked to provide an opinion

1 about the federal tax treatment of XRP?

2 MR. FORD: Object to the
3 form of the question.

4 A. The -- the question is -- the questions
5 presented were -- were very specific. Virtual
6 currency such as XRP is what I was asked to
7 provide an opinion on.

8 Q. Okay. Well, I'm asking you about XRP
9 itself.

10 A. Yeah.

11 Q. Do you know why you were asked to
12 provide an expert opinion about the federal tax
13 treatment of XRP?

14 MR. FORD: So object to the
15 form of the question. Asked and
16 answered.

17 And, again, to the extent you
18 can answer that without revealing
19 conversations with counsel, you can
20 answer, but otherwise I direct you not to
21 answer.

22 A. Yeah. I -- I think I said I was asked
23 to -- to discuss the federal income tax
24 classification of virtual currency such as XRP.

25 Q. Okay. Now, are you making an assumption

1 that XRP is a virtual currency or are you
2 providing an opinion that XRP is a virtual
3 currency?

4 A. So paragraph 11 lists the
5 characteristics of XRP.

6 Q. So my question is: Are you making an
7 assumption --

8 MS. ZORNBERG: I think he
9 answered --

10 Q. -- that XRP is a virtual currency or are
11 you providing an opinion that XRP is a virtual
12 currency?

13 MR. FORD: Object to the
14 form of the question. Asked and
15 answered.

16 A. So what -- what I'm saying is there are
17 characteristics of XRP in paragraph 11 and there's
18 a definition of virtual currency. So my -- my
19 opinion is that virtual currency such as XRP does
20 not come within the federal income tax definition
21 of securities.

22 Q. Okay. Well, my question specifically --
23 so is it that your -- your opinion that XRP is a
24 virtual currency?

25 MR. FORD: Object to the

1 form of the question.

2 A. Yeah. I am not -- and I think I -- I
3 was asked to provide an opinion on virtual
4 currency such as XRP. And so my opinion relates
5 to virtual currency such -- such as XRP.

6 Q. Okay. So are you making an -- is it
7 your opinion based on your professional education
8 that XRP is a virtual currency?

9 MR. FORD: Object to the
10 form of the question. Asked and
11 answered.

12 A. So I know that XRP has been treated as
13 virtual currency. In paragraph 12 it cites a
14 settlement with the U.S. Department of Treasury
15 and it also cites FinCEN guidance.

16 Q. Okay.

17 A. And so my understanding is XRP was
18 treated as virtual currency in -- in that setting.

19 Q. Is it your professional opinion or is
20 this an assumption that you're making?

21 MR. FORD: Object to the
22 form of the question.

23 A. This is me stating what is -- what I
24 understand to be in the -- in the settlement with
25 the U.S. Department of -- the -- the U.S.

1 Attorney.

2 Q. Okay. So is this the -- your claim that
3 XRP is a virtual currency, is that based on your
4 independent opinion about the status of XRP as a
5 virtual currency or are you relying solely on the
6 Department of Justice settlement?

7 MR. FORD: Object to the
8 form of the question. Asked and
9 answered.

10 A. So there is -- there is the settlement
11 out there that identifies XRP as virtual currency.

12 Q. Okay.

13 A. I'm saying -- I'm saying that.

14 Q. All right. Let's go back to the
15 opinions that you've actually formed in this case.

16 A. Okay.

17 Q. So can you tell me all of the opinions
18 that you formed in response to the questions in --

19 A. Sure.

20 Q. -- paragraph 8(a) and (c)?

21 A. Sure.

22 MR. FORD: Object to the
23 form of the question.

24 A. So my opinions are listed in paragraph
25 9.

1 Q. Mm-hmm. Can you tell us what your
2 opinions are?

3 A. Well, so with respect to the first
4 question, "Has authoritative guidance been issued
5 regarding the federal income tax classification of
6 virtual currency such as XR" --

7 THE REPORTER: Excuse me.

8 When you read, please slow down.

9 THE WITNESS: Sorry. I'm so
10 sorry about that.

11 A. Okay. "Has authoritative guidance been
12 issued regarding the federal income tax
13 classification of virtual currency such as XRP?"

14 And my answer to that is yes.

15 Q. Any other opinion that you've formulated
16 in this case?

17 A. So the next question is: "Does that or
18 any other guidance classify virtual currency such
19 as XRP as security for federal income" -- "income
20 tax purposes?" And the answer to that is no.

21 Q. And any other opinion?

22 A. So, again, would a -- the third
23 question -- it's limited by the date, but it's
24 asking generally whether a reasonable buyer or
25 seller would expect virtual currency such as XRP

1 to be classified as a security for federal income
2 tax purposes and qualify for a rule -- for
3 security specific exception to the -- the general
4 rules. And my answer there is no.

5 Q. Okay. So when you use the word -- the
6 term "such as XRP," what are you basing these
7 terms on?

8 MR. FORD: Object to the
9 form of the question.

10 A. It -- yeah. Would -- would you restate
11 that?

12 Q. When you use the term "such as XRP,"
13 what is the basis for these terms?

14 A. Okay.

15 MR. FORD: Object to the
16 form of the question.

17 A. So -- so virtual currency is defined in
18 the -- what I call the Notice 2014 guidance. The
19 IRS issued Notice 2014-21 in 2014. And in there
20 they used the term "virtual currency" and they
21 provide a definition.

22 And then in paragraph 11 I identify the
23 characteristics of XRP. And so my opinion is
24 limited to virtual currency that has the type of
25 characteristics that are listed in paragraph 11.

1 Q. So have you formulated an opinion that
2 XRP is a virtual currency?

3 MR. FORD: Object to the
4 form of the question.

5 A. Yeah. That is not part of my opinion.

6 Q. Okay. Were you told that XRP is a
7 virtual currency other than what you've described
8 that you -- were you told by anyone that XRP is a
9 virtual currency?

10 MR. FORD: Object to the
11 form of the question.

12 A. I -- I -- I don't believe so.

13 Q. Going to -- back to your -- the first
14 question that you were assigned with, what is the
15 basis for your opinion in paragraph 9(a) that the
16 IRS's guidance classifies virtual currency and,
17 using your words, "such as XRP as property"?

18 MR. FORD: Object to the
19 form of the question and to the
20 characterization of the document.

21 A. Okay. So -- so the basis of the -- I'm
22 sorry. The -- the primary basis of the opinion in
23 Question (a) is IRS Notice 2014-21.

24 Q. And what in IRS Notice 2014-21 supports
25 your opinion?

1 A. So the -- the notice provides that for
2 federal tax purposes, virtual currency is treated
3 as property.

4 Q. Let me hand you -- I've handed you
5 what's been premarked Exhibit 72.

6 Do you recognize Exhibit 72?

7 A. This exhibit appears to be Notice
8 2014-21.

9 Q. Is this the Notice 2014-21 that you are
10 referencing in your Opinion 9(a)?

11 A. Yes.

12 MS. GUERRIER: Can you
13 please mark the notice? I believe
14 that's Exhibit 3.

15 THE WITNESS: Let me make
16 sure. You said 9 --

17 THE REPORTER: Did you want to
18 mark it 3 or --

19 MS. GUERRIER: Yes, 3, please.
20 Can you mark it 3, please?

21 (Whereupon, previously marked
22 Exhibit 72 is presented and marked SEC
23 Borden Deposition Exhibit 3 for
24 identification.)

25 MS. GUERRIER: Thank you.

1 A. You asked about paragraph 9(a) versus
2 IRS 2014 guidance?

3 Q. Yes.

4 A. Yeah.

5 Q. Did anyone assist you with forming the
6 opinion that you've provided in paragraph 9(a)?

7 A. No.

8 Q. I'm sorry?

9 A. No.

10 Q. Okay. Did you rely on any facts in
11 support of the opinion that you formulated in
12 paragraph 9(a)?

13 A. So --

14 MR. FORD: Object to the
15 form of the question.

16 A. So paragraph 9(a) answers whether
17 authoritative guidance has been issued regarding
18 the federal income tax classification of virtual
19 currency such as XRP. This is that authoritative
20 guidance.

21 Q. Okay. So is this -- are you referring
22 to this as a fact that -- fact that you relied
23 upon in support of your opinion?

24 MR. FORD: Sorry. Object to
25 the form of the question.

1 A. Yeah. Yeah. Could you -- I'm sorry,
2 could you re -- could you restate that?

3 Q. Okay. Were -- were you provided with
4 any facts in support of your opinion in paragraph
5 9(a)?

6 MR. FORD: Object to the
7 form of the question.

8 A. Yeah. Can you clarify what you mean by
9 "provided"?

10 Q. Well, did you consider any facts at all
11 in support of your opinion that you formulated
12 regarding your answer to question 8(a)?

13 A. Yeah, so --

14 MR. FORD: Sorry. Object to
15 the form of the question. I think
16 you mean 9(a). Or, sorry, the
17 question did.

18 A. Okay. So the question is: Has
19 authoritative guidance been issued regarding the
20 federal income tax classification of virtual
21 currency such as XRP?

22 Q. Mm-hmm.

23 A. And the answer is, yes, there's Notice
24 2014-21.

25 Q. Right. So --

1 A. That -- yeah.

2 Q. Will that be considered data rather than
3 fact?

4 MR. FORD: Object to the
5 form of the question.

6 A. Yeah. I don't know that I'm -- I'm
7 familiar with the distinction between data and
8 fact.

9 Q. Okay. Were you -- so do you understand
10 what facts are?

11 A. I would say I generally understand what
12 a fact -- facts are.

13 Q. Okay. So were there any facts provided
14 to you by counsel regarding -- to help you
15 formulate your opinion in paragraph 9(a)?

16 A. I would say that the -- the -- the
17 facts -- so to go to paragraph 11 that list the
18 characteristics of XRP. So the opinion in nine --
19 in 9(a), opinion stated in 9(a), addresses virtual
20 currency such as XRP.

21 So I did rely upon the RFAs in forming
22 that opinion because the opinion relates to
23 virtual currency such as XRP.

24 Q. Okay. So the -- you -- are you
25 identifying the documents that you considered in

1 formulating your opinion in support of paragraph
2 9(a)?

3 MR. FORD: Object to the
4 form of the question.

5 A. So I identified some of the facts that
6 I -- that I relied upon in -- in formulating the
7 opinion in 9(a).

8 Q. Okay. So what are the specific facts
9 that you considered in formulating the opinion in
10 9(a)?

11 A. Notice 2014-21.

12 Q. Anything else?

13 A. So 9(a) say -- it talks about the IRS
14 2014 guidance. That guidance continues to
15 represent the IRS's public position on virtual
16 currency such as XRP. And if you look at the body
17 of the report, it cites the -- it cites Notice
18 2014-21.

19 And then it also talks about -- if -- if
20 you go over to paragraph 22, it talks about
21 Frequently Asked Questions on virtual currency
22 transactions and it also cites to Revenue Ruling
23 2019-24.

24 Q. So are all these the documents that you
25 relied on in support of your opinion in 9(a)?

1 A. I relied upon these documents in support
2 of my opinion in 9(a).

3 Q. Did counsel provide you with any other
4 documents in support of your opinion in 9(a)?

5 MR. FORD: Object to the
6 form of the question.

7 A. Other than -- the documents that counsel
8 provided me with are listed in Footnote 7 through,
9 I think, 16.

10 Q. Okay. And were you provided with any
11 assumptions in support of your opinion in 9(a)?

12 MR. FORD: Object to the
13 form of the question.

14 A. Can you be specific about who would have
15 provided them?

16 Q. Well, I'm -- I don't -- I'm asking you
17 if you were provided with any assumptions.

18 MR. FORD: Same objection.

19 A. No.

20 Q. Did you make any assumptions in support
21 of your opinion in 9(a)?

22 A. I don't believe so.

23 Q. Okay. Can you -- did you conduct any
24 analysis in support of your opinion in 9(a)?

25 A. Yes.

1 Q. Okay. And is the analysis included in
2 your report?

3 A. Yes.

4 Q. Where is it in your report?

5 A. It would begin on paragraph 18.

6 Q. Okay. So going back to the documents
7 that you relied on in support of your opinion in
8 paragraph 9(a), can you tell me what specific
9 documents support your opinion?

10 MR. FORD: Object to the
11 form of the question.

12 A. So Notice -- we're talking about 9(a)
13 just to make sure. That's the same question we've
14 been talking about, right? Same opinion we've
15 been talking about?

16 Q. Yes. We're still on 9(a) unless I say
17 otherwise.

18 A. Okay. So paragraph 18. So we're ask --
19 you ask -- re -- restate the question. Sorry.

20 Q. So going back to the documents that you
21 relied on in support of your opinion in 9(a), can
22 you tell me what specific documents support your
23 opinion?

24 MR. FORD: Object to the
25 form of the question.

1 A. Okay. So 9(a), the answer is, "Yes, the
2 IRS has issued authoritative guidance regarding
3 the federal income tax classification of virtual
4 currency such as XRP?" That's -- that's the
5 question.

6 I relied upon IRS Notice 2014-21. And,
7 also, the Frequently Asked Questions on virtual
8 currency transactions and Revenue Ruling 2019-24
9 are specific guides that I relied upon.

10 Q. Okay. Now, if you look at the IRS
11 guidance, can you explain to me who is the
12 audience for the IRS's guidance 2014-21?

13 MR. FORD: Object to the
14 form of the question.

15 A. So the IRS publishes guidances like
16 Notice 2014 to the -- it's available to the
17 general public.

18 Q. Okay. And what does -- what type of
19 guidance does 2014-21 provide?

20 A. So it says that virtual currency -- it
21 provides a definition for virtual currency. And
22 then it says "Virtual currency is treated as
23 property."

24 Q. Okay.

25 A. And "General tax principles applicable

1 to property transactions apply to transactions
2 using virtual currency."

3 Q. Does the -- how does the IRS define
4 virtual currency in the notice?

5 A. So it says that virtual -- so the report
6 cites it. Let me just see what the report says.
7 So it defines virtual currency as "a digital
8 representation of value that functions as a medium
9 of exchange, a unit of account, and/or a store of
10 value."

11 Q. Does the IRS notice make any mention of
12 a virtual currency that's considered a security --

13 MR. FORD: Object to the
14 form of the question.

15 Q. -- under the federal securities laws?

16 MR. FORD: Apologies.
17 Object to the form of the question.

18 A. Yeah. Can you answer that one -- ask
19 that one more time?

20 Q. Does the IRS guidance make any reference
21 to a virtual currency that's considered a security
22 under the federal securities laws?

23 MR. FORD: Object to the
24 form of the question.

25 A. So -- say it one more time. Sorry. I

1 need to make sure I understand that.

2 Q. Does the IRS guidance make any reference
3 to a virtual currency that's considered a security
4 under the federal securities laws?

5 MR. FORD: Same objection.

6 A. Okay. I am not an expert on securities
7 laws.

8 Q. Okay. That wasn't my question.

9 A. Okay.

10 Q. My question was: Does the IRS guidance
11 make any reference to a virtual currency that's
12 considered a security under the federal securities
13 laws?

14 MR. FORD: Object to the
15 form of the question. Asked and
16 answered.

17 A. Yeah. I -- I -- I do not know
18 securities laws, so I can't speak to whether
19 anything mentioned in this notice would qualify
20 within the securities laws.

21 Q. Does the notice make any reference to
22 securities?

23 A. I am not aware of it making any
24 reference to securities.

25 MR. FORD: If you need to

1 review the document --

2 THE WITNESS: Okay.

3 MR. FORD: -- you can feel

4 free to do that.

5 Q. Do you need to review the document,
6 Professor?

7 A. Yeah, I can -- I actually can take a
8 break but --

9 MR. FORD: Yeah.

10 Q. Well --

11 MR. FORD: Yeah. I mean --

12 THE WITNESS: Do you want me
13 to do this --

14 MR. FORD: Let's --

15 MS. ZORNBERG: He can do it
16 here.

17 MR. FORD: Read the
18 document.

19 THE WITNESS: Okay.

20 MR. FORD: And then we can
21 take a break. We can take a break
22 sometime soon when you're finished
23 with this line of questioning.

24 (Pause)

25 THE WITNESS: Okay.

1 BY MS. GUERRIER:

2 Q. Now, is the scope of Notice 2014-21
3 limited solely to the virtual currencies as
4 defined in the notice?

5 A. It's -- it's -- you're asking me what
6 the scope is?

7 Q. Yes.

8 A. So the -- the scope is in Section 3.

9 Q. So what is the scope of the notice?

10 A. The scope of the notice is transactions
11 that use convertible virtual currency. "The term
12 'virtual currency' as used in Section 4 refers
13 only to convertible virtual currency."

14 Q. Can you read that last sentence?

15 A. "No inference should be drawn with
16 respect to virtual currencies not described in
17 this notice."

18 Q. Does the IRS define convertible --
19 convertible virtual currency in the notice?

20 A. Yes.

21 Q. How does the IRS define virtual
22 currency?

23 A. "Virtual currency that has an equivalent
24 value in real currency, or that acts as substitute
25 for real currency, is referred to as 'convertible'

1 virtual currency." Virtual -- "Bitcoin is one
2 example of convertible virtual currency. Bitcoin
3 can be digitally traded between users and can be
4 purchased for, or exchanged into, U.S. dollars,
5 Euros, and other real or virtual currencies."

6 Q. So is it -- is the scope of the notice
7 limited only to convertible virtual currency as
8 that term is defined by the IRS?

9 A. Yes.

10 Q. Okay. So did you make any assumption
11 regarding XRP status as a convertible virtual
12 currency?

13 MR. FORD: Object to the
14 form of the question.

15 A. So what did I say?

16 So if you look at paragraph 18, where it
17 says "The IRS presented bitcoin as" a -- "as an
18 example of such virtual currency." And it
19 talks -- and it says that it "can be digitally
20 traded between users and can be purchased with, or
21 exchanged into, U.S. dollars, Euros, or other real
22 virtual currencies. XRP has similar
23 characteristics and is subject to the IRS 2014
24 guidance."

25 Q. Okay. So is this an opinion that you're

1 providing regarding the claimed characteristics of
2 XRP in paragraph 18?

3 MR. FORD: Object to the
4 form of the question.

5 A. I'm relying upon the characteristics
6 that are described in paragraph 11, presented in
7 paragraph 11 --

8 Q. Okay.

9 A. -- to say that XRP has similar
10 characteristics and is subject to the 2014
11 guidance.

12 Q. Okay. How did you come up with the
13 characteristics that you described in paragraph 11
14 of your report?

15 A. I relied upon -- let me go back to
16 paragraph 11.

17 So paragraph 11, as it says, "From My
18 review of materials in this case, including facts
19 the SEC has admitted..." Based on -- based on
20 review of those materials, "I understand that XRP
21 has the following features and characteristics."

22 And then it cites to the RFAs and the --
23 is that called the Proc.?

24 Q. Okay. So what specific facts are you
25 referring to --

1 A. Okay.

2 Q. -- where you were able to identify XRP's
3 claimed characteristics?

4 MR. FORD: Object to the
5 form of the question.

6 A. Okay. So -- so it says "XRP has similar
7 characteristics to" the -- the sentence before it
8 talked about bitcoin. And then in Notice 2014-21,
9 there's a discussion of bitcoin as an example of
10 convertible currency. So it says that bitcoin can
11 be digitally traded between users and can be
12 purchased.

13 So if you look at the -- Footnote 7 says
14 that XRP can be bought and sold on global
15 exchanges and then can be purchased for or
16 exchanged for U.S. dollars. I don't know if I
17 have that -- so bought and sold.

18 So if we go back and -- I'd have to go
19 back and look specifically at some of these RFAs,
20 and we can do that, but they can be bought and
21 sold or exchanged -- they can be purchased or
22 exchanged into U.S. dollars, Euros, and other real
23 virtual currencies.

24 So XRP, based on the RFAs, has those --
25 has those characteristics.

1 Q. Okay.

2 MR. FORD: I think we've
3 been going for about 90 minutes. If
4 this is a good time to break for
5 lunch...

6 MS. GUERRIER: Let me
7 just -- before one -- I just want to
8 clarify that.

9 BY MS. GUERRIER:

10 Q. Does your paragraph 11 include all of
11 the claimed characteristics of XRP based on your
12 opinion?

13 MR. FORD: Object to the
14 form of the question.

15 A. So these are factors and characteristics
16 that are relevant to my opinion.

17 Q. Okay. All right.

18 MS. GUERRIER: So why don't
19 we take a break --

20 THE WITNESS: Okay.

21 MS. GUERRIER: -- because
22 this is going to take a lot longer.

23 MR. FORD: Want to just take
24 half an hour and we'll come back --

25 MS. GUERRIER: Half an hour

1 is fine.

2 MR. FORD: Great.

3 THE VIDEOGRAPHER: Time on
4 the monitor, 12:57 p.m. End of Media
5 Unit Number 3. Going off the video
6 record.

7 (Whereupon, a luncheon recess
8 is taken.)
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1 A F T E R N O O N S E S S I O N

2 THE VIDEOGRAPHER: The time
3 on the video monitor is 1:34 p.m. We
4 are back on the video record, start
5 of Media Unit 4.

6 BY MS. GUERRIER:

7 Q. Professor, is there any reference to XRP
8 in the IRS's Notice 2014-21?

9 (Pause)

10 A. I don't see any reference.

11 Q. Okay. Going back to paragraph 11 of
12 your report, you were -- you listed the claim
13 characteristics of XRP. And one of those
14 characteristics you say is that it can be bought
15 and sold on global exchanges.

16 What is the basis for this statement?

17 A. So that statement would be found in
18 the -- in what's cited there.

19 Q. And what is cited there?

20 A. This is the plaintiff's answers and
21 objectives. The -- and also some of the RFAs.

22 Q. Okay. So is Footnote 7 the reference
23 for that statement that the features -- one of the
24 features of XRP is that it can be bought and sold
25 on global exchanges?

1 A. That's one place where it talks about
2 buying and selling --

3 Q. Well, did you cite --

4 A. -- XRP.

5 Q. I'm sorry.

6 A. I was finished.

7 Q. Did you cite in Footnote 7 to all of the
8 references that you relied upon for the statement
9 that XRP can be bought and sold on global
10 exchanges?

11 MR. FORD: Object to the
12 form of the question.

13 A. There may be other references in the
14 RFAs that talk about buying and selling virtual
15 currency.

16 Q. Does it -- I'm sorry.

17 A. Go -- go ahead.

18 Q. What other references in the RFAs that
19 you're referring to?

20 A. I would have to go back through the RFAs
21 individually to see if there's any other
22 references to buying and selling.

23 Q. Okay. And are you just speaking to
24 buying and selling -- selling generally or buying
25 and selling on global exchanges as you've stated

1 in paragraph 11 of your report?

2 A. I -- I would need to go back and look to
3 see specifically if that's -- if some of those
4 cites are dealing with buying and selling and some
5 are dealing with global exchanges.

6 Q. Okay. So why didn't your Footnote 7
7 include all of the cites that refer to global
8 exchanges?

9 MR. FORD: Object to the
10 form of the question and the
11 characterization of the footnote.

12 A. So the characteristic is that XRP is
13 bought and sold and the footnotes cited support
14 that conclusion.

15 Q. So are you saying that the footnotes
16 support the conclusion that XRP is bought and sold
17 on global exchanges?

18 A. The footnotes, that's what the -- that's
19 what I'm saying.

20 Q. Okay.

21 A. That the footnote -- you have a
22 statement in a footnote. The footnotes provide
23 the support for that statement.

24 (Whereupon, previously marked
25 Exhibit 35 is presented and marked SEC

1 Borden Deposition Exhibit 4 for
2 identification.)

3 BY MS. GUERRIER:

4 Q. I've handed you what's been premarked
5 Exhibit 35.

6 Do you recognize the document that I've
7 handed you?

8 A. This appears to be the first set of
9 RFAs.

10 Q. Okay. Is this the document that you --
11 you cited in para -- in Footnote 7 of your
12 report?

13 A. Yes.

14 Q. Okay. So you specifically cite to RFAs
15 Numbers 50, 51 and 52.

16 A. Okay.

17 Q. Can you show me in those RFAs where you
18 find the reference to global exchanges?

19 (Pause)

20 A. Okay. So these -- so 50, RFA 50, says
21 "Admit that holders of XRP that acquired XRP
22 through any market makers, or on the open market,
23 were free to determine, in their unilateral
24 discretion and without knowledge and consent,
25 approval or authorization of the defendants,

1 whether and when to buy, continue to hold, or sell
2 any XRP at any time."

3 And the answer is "The Commission admits
4 that certain" purchases -- "certain purchasers
5 enjoyed unrestricted discretion to buy, sell, and
6 hold their XRP."

7 So there's unrestricted discretion about
8 how to buy it.

9 Q. Do you see the word "global exchanges"
10 in any of these admissions?

11 A. What I -- what I see is unrestricted
12 discretion to buy, sell or hold.

13 Q. So what is your basis that
14 unrestricted --

15 A. The -- the statement in the -- in the
16 report is it can be bought and sold on global
17 exchanges. There is nothing that restricts the
18 buying and selling of XRP on global exchanges.

19 Q. But can you point me to anything in
20 paragraph 50 that references global exchanges?

21 A. So paragraph 50 admits that there is
22 unrestricted discretion to buy, sell and hold
23 XRP." So it -- it -- it allows XRP -- it
24 doesn't restrict. So it can be sold on global
25 exchanges. There's no restriction or prohibition

1 against it.

2 Q. So how did you arrive from that XRP's
3 purchase -- purchasers enjoyed unrestricted
4 discretion to buy, sell or hold their XRP to the
5 conclusion that this is referring to global
6 exchanges?

7 MR. FORD: Object to the
8 form of the question.

9 A. So the -- the statement in the report is
10 that XR -- "it," referring to XRP, can be bought
11 and sold on global exchanges.

12 And the Answer 50, or answer to Request
13 for Admission No. 50, says that the holders of XRP
14 enjoy "unrestricted discretion to buy, sell, or
15 hold their XRP."

16 Q. Again, is there any reference to the
17 term "global exchanges" in any of the paragraphs
18 that -- in these RFAs that you cited in support of
19 your Footnote 7?

20 MR. FORD: Objection to the
21 form. Asked and answered.

22 A. The -- the questions provide
23 unrestricted.

24 Q. Right.

25 Is the -- is the term "global exchanges"

1 used in any of the paragraphs that you cited in
2 your Footnote 7?

3 MR. FORD: Object to the
4 form. Asked and answered.

5 A. So footnote -- I do not see the term
6 "global exchange" in RFA 50, 51 or 52.

7 Q. Why did you use the term "global
8 exchanges"?

9 A. I -- I -- I -- I don't know. There's...

10 Q. Were you done with your answer?

11 A. Yes.

12 Q. Okay. Would the unrestricted
13 exchange -- unrestricted direction -- discretion
14 to buy, sell, hold XRP be limited to domestic
15 exchanges?

16 MR. FORD: Object to the
17 form of the question and to the
18 characterization of the document.

19 A. So "unrestricted" suggests there are
20 no restrictions on where it can be bought and
21 sold.

22 Q. Could it be limited to just domestic?

23 A. Un --

24 MR. FORD: Object -- sorry.
25 Object to the form of the question.

1 Asked and answered.

2 A. "Unrestricted" suggests there is no
3 limitation.

4 Q. Did counsel tell you that XRP was bought
5 and sold on global exchanges?

6 A. Not that I recall.

7 Q. And is it your testimony that you don't
8 recall how you came up with the term "global
9 exchanges"?

10 A. That -- that -- so I -- I know that RFA
11 50 says there's unrestricted discretion. And --
12 and global exchanges would be broad enough to
13 capture any place where these could be sold.

14 Q. Why didn't you use domestic and global
15 exchanges in your paragraph 11 when referring to
16 where XRP could be bought and sold?

17 MR. FORD: Object to the
18 form of the question.

19 A. Yeah. I don't -- I don't recall.

20 Q. Okay. Are the characteristics that
21 you've identified in paragraph 11 solely based on
22 the evidentiary record that you've cited in
23 Footnotes 7 through 15?

24 A. So there are a few words there that
25 probably are not based solely on what's cited in

1 the footnotes.

2 Q. Why didn't you include them in the
3 footnotes?

4 MR. FORD: Object to the
5 form of the question and to the
6 characterization of the testimony.

7 A. Can you repeat the question?

8 Q. Sure.

9 My question was, are there
10 characteristics -- "Are the characteristics that
11 you've identified in paragraph 11 solely based on
12 the evidentiary record that you cited in Footnotes
13 7 through 15?"

14 You answered "So there are a few words
15 there that probably are not based solely on
16 what's cited in the footnotes."

17 I said "Why didn't you include them in
18 the footnotes?"

19 MR. FORD: Object to the
20 form of the question.

21 A. The words are in the text.

22 Q. Do Footnotes 7 through 15 provide a
23 basis in support of the characteristics that
24 you've identified in paragraph 11?

25 A. Yes.

1 Q. Okay. Is there anything else that you
2 relied upon or -- in support of the char --
3 characteristics that you've identified in
4 paragraph 11?

5 A. Yes.

6 Q. What else did you rely on?

7 A. My experience. My knowledge.

8 Q. What specifically in your experience did
9 you rely on?

10 A. So there are a few words that says that
11 XRP is not recognized as an interest in any legal
12 person and then says -- referring to XRP -- it
13 cannot own property and cannot track -- transact
14 business in its own name.

15 Q. And how do these statements support your
16 opinion that you provided in paragraph 9(a) in
17 your report?

18 MR. FORD: Object to the
19 form of the question.

20 A. So paragraph 9(a) responds to the
21 question "Has authoritative guidance been issued
22 regarding the federal income tax classification of
23 virtual currency?" And I answer yes and I refer
24 to the 2014 guidance and say that that guidance
25 continues to represent the IRS -- IRS's public

1 position on virtual currency such as XRP.

2 And, so, as we've -- we've been through,
3 we talked about how Rev. Proc. 2014-21 refers to
4 virtual currency and has characteristics related
5 to virtual currency and how the characteristics
6 listed in paragraph 11 demonstrate that XRP is the
7 type of virtual currency to which Notice 2014-21
8 would apply.

9 Q. Have you conducted this type of analysis
10 where you're comparing the characteristics of one
11 digital asset to the characteristics of a virtual
12 currency?

13 MR. FORD: Object to the
14 form of the question.

15 A. I did that for the purpose of this
16 opinion.

17 Q. Other than this opinion, have you
18 conducted this type of analysis?

19 A. Not that I can --

20 MR. FORD: I'm sorry. Same
21 objection to the form.

22 Q. What was the answer?

23 A. I don't recall ever applying this
24 analysis outside -- to -- to virtual currency --

25 Q. Okay.

1 A. -- outside of this opinion.

2 Q. Has anyone in your -- your -- in your
3 field applied the analysis that you've applied
4 here comparing virtual currency to the
5 characteristics of XRP?

6 MR. FORD: Object to the
7 form of the question.

8 A. Yeah. I would have to -- there are a
9 few publications that are cited in the materials.
10 I'd have to go back and review.

11 Q. Can you identify them?

12 A. Yes. On page -- on page 2 and 3 of
13 Exhibit -- of Exhibit B.

14 Q. What specific publications?

15 A. So there's one by Keyes and Knapp.
16 There's one by --

17 Q. I'm sorry. Can you give the full name
18 for the Keyes and Knapp one?

19 A. Yeah. That one -- so that one says
20 "Federal Taxation of Financial Instruments and
21 Transactions," is the title of that publication.

22 Q. I'm sorry, what page are you on?

23 A. I'm on page 2 of Exhibit -- I think it's
24 Exhibit B. Exhibit B.

25 Q. So that -- that's a book written in

1 1997?

2 A. Correct.

3 Q. So is your testimony that in 1997 there
4 was an analysis conducted comparing virtual
5 currencies to digital assets?

6 A. No.

7 MR. FORD: I'm sorry.

8 Object to the form of the question.

9 Q. So how is this book relevant to the
10 analysis that you conducted?

11 A. I -- I think that what I was saying is
12 they're academic authorities -- or there's a
13 category called "Academic Authorities." And I
14 don't know if I said it or made it clear, but it
15 begins with this publication by Keyes and Knapp.

16 Q. What -- does this publication address
17 virtual currencies at all?

18 A. Not that I know of.

19 Q. Does this publication compare digital
20 assets that you're aware of?

21 A. Not that I'm aware of.

22 MR. FORD: Object to the
23 form of the question.

24 Please just give me a second.

25 THE WITNESS: Yeah.

1 Q. What other publication that you're
2 referring to that -- where your methodology was
3 applied?

4 A. So I haven't claimed that my methodology
5 has been applied in these other settings.

6 Q. Okay. So what other book that you
7 reference in your response to my question applied
8 the analysis that you applied to XRP versus
9 virtual currencies?

10 MR. FORD: Object to the
11 form of the question.

12 A. Yeah. I'm not -- I'm not aware of any
13 other publication that applies my analysis to
14 virtual currencies.

15 Q. Okay. Any other basis in support of
16 your opinion in paragraph 9(a)?

17 MR. FORD: Object to the
18 form.

19 A. "Has authoritative guidance been issued
20 by the federal..."

21 So we have -- we've -- we've gone
22 through Notice 2014-21. And then also identified
23 the -- the -- the Frequently Asked Questions and
24 then Revenue Ruling 2019-24. And then it says
25 "That guidance continues to represent the IRS

1 public position on virtual currency."

2 The -- the rest of this -- the rest of
3 the report talks about virtual currency and how
4 it does not come within the definition of
5 security for federal income tax purposes.

6 And so they support the position that
7 this is the authoritative guidance on this issue.

8 Q. Okay. Let me give you a copy of that.

9 (Whereupon, previously marked
10 Exhibit 70 is presented and marked SEC
11 Borden Deposition Exhibit 5 for
12 identification.)

13 BY MS. GUERRIER:

14 Q. I've handed you what's been premarked
15 Exhibit 70.

16 Do you recognize the document that's
17 been premarked Exhibit 70?

18 A. Yes.

19 Q. What is the document that you're
20 reviewing?

21 A. This is Revenue Ruling 2019-24.

22 Q. And what does Revenue Ruling 2019-24
23 address?

24 A. It addresses certain types of
25 transactions that occur with respect to

1 cryptocurrency.

2 Q. Do you know what types of transactions
3 that the Revenue Ruling 2019-24 addresses
4 specifically?

5 A. So it specifically applies to hard forks
6 of cryptocurrency, is one type of -- and, also, an
7 airdrop.

8 Q. Do you have an understanding of the
9 meaning of a "hard fork" as that term is used in
10 Revenue Ruling 2019-24?

11 A. I don't have extensive knowledge
12 regarding the concept of hard fork.

13 Q. Do you have a general understanding of
14 what a hard fork is?

15 A. It would be very, very general.

16 Q. Can you tell me what your understanding
17 of hard fork is?

18 A. Yeah. I mean, it's stated here in -- on
19 page 2 of Revenue Ruling 2019-24. It says that "A
20 hard fork is unique to distributed ledger
21 technology and occurs when a cryptocurrency on a
22 distributed ledger undergoes a protocol change
23 resulting in a permanent diversion from legacy or"
24 -- "or existing distributed ledger."

25 Q. Okay. Other than reading from the

1 Revenue Ruling the definition of a hard fork, did
2 you have a prior understanding of what a hard fork
3 was?

4 A. No.

5 Q. So you also stated that the Revenue
6 Ruling addresses airdrops.

7 Do you have any understanding of the
8 meaning of an airdrop under the Revenue Ruling
9 2019-24?

10 A. Not beyond Revenue Ruling 2019-24.

11 Q. Okay. So you referred to Revenue Ruling
12 2019-24 as a basis for your Opinion 9(a).

13 How does the Revenue Ruling 2019-24
14 support your opinion in paragraph 9(a)?

15 A. So I think paragraph 23 of the report
16 addresses that.

17 Q. And can you explain what you're
18 describing in paragraph 23 of the report?

19 A. Yes. If you look at the first sentence
20 under the heading "Background," it says "Virtual
21 currency is a digital representation of value that
22 functions as a medium of exchange, a unit of
23 account, or a store of value other than a
24 representation of the U.S. dollar or a foreign
25 currency."

1 That's the language that was used in
2 Notice 2014-21.

3 Q. Were you just reading from Revenue
4 Ruling 2019 --

5 A. Yes.

6 Q. -- 24?

7 A. Yes.

8 Q. Okay. So how does this language support
9 your opinion in 9(a)?

10 A. So -- so Revenue Ruling 2019-24 is
11 adopting and it applies to the same type of asset
12 described in Notice 2014-21.

13 Q. What specific asset does it apply to?

14 A. Virtual currency.

15 Q. Okay. So does -- does it matter that
16 it -- Revenue Ruling 2019-24 refers to hard forks
17 and airdrops?

18 A. The -- so Revenue Ruling 2019-24 is
19 drawing upon the general principles provided in
20 Notice 2014-21. That says that -- Notice 2014-21
21 says virtual currency is property and the general
22 property transaction rules apply to virtual
23 currency.

24 So Notice 2000 -- or Revenue Ruling
25 2019-24 is demonstrating the application of those

1 general property transaction rules to specific
2 types of transactions.

3 Q. What's the question being asked in
4 Revenue Ruling 2019-24?

5 MR. FORD: Object to the
6 form of the question.

7 A. So we're looking at 2019-24? And you
8 asked about question --

9 Q. What is the question being asked by
10 Revenue Ruling 2019-24?

11 A. So there are two --

12 MR. FORD: Object to the
13 form of the question.

14 Go ahead.

15 A. Okay. So Revenue Ruling 2019-24
16 addresses two questions.

17 Q. Okay. So what are the questions that
18 are being addressed?

19 A. "Does a taxpayer have gross income under
20 Section 61 of the Internal Revenue Code as a
21 result of a hard fork of cryptocurrency the
22 taxpayer owns if the taxpayer does not receive
23 units of a new cryptocurrency?"

24 Q. And the second question?

25 A. "Does a taxpayer have gross income under

1 Section" 20 -- "under Section 61 as a result of an
2 airdrop of a new cryptocurrency following a hard
3 fork if the taxpayer receives units of new
4 cryptocurrency?"

5 Q. So do any of these questions or issues
6 that are being asked in Revenue 2019-24 have
7 anything to do with the guidance that's being
8 provided in IRS Notice 2014-21?

9 A. So in Revenue Ruling 2019-24, the IRS
10 draws upon the principles that it announced in
11 Notice 2014-21 to answer these two questions.

12 Q. Does it -- does the Revenue Ruling
13 2019-24 make a reference to the IRS Notice
14 2014-21?

15 A. I don't see any reference in Revenue
16 Ruling 2019-24 to Notice 2014-21.

17 Q. Okay. Going back to paragraph 18 of
18 your report, I believe you stated that this is
19 where you conducted the analysis in support of
20 paragraph -- of opinion -- of your opinion in
21 paragraph 9(a), is that correct?

22 MR. FORD: Object to the
23 form of the question.

24 Mischaracterizes the testimony.

25 A. So 9(a), yeah, has -- "Has authoritative

1 guidance been issued regarding the federal income
2 tax classification of virtual currency such as
3 XRP?" My answer is yes. There's the 2014
4 guidance. And then paragraph 18 talks about the
5 2014 guidance.

6 Q. Okay. Is there anywhere else in your
7 report where you're conducting any analysis in
8 support of your opinion in 9(a)?

9 MR. FORD: Object to the
10 form of the question. Asked and
11 answered.

12 A. So -- right. So, again, in 9(a) we
13 talked -- I had -- I -- I talked about Notice
14 2014-21. That's the IRS guidance. That's the IRS
15 2014 guidance, is how it's referred to in
16 paragraph 9(a).

17 And then I also mentioned specifically
18 that that -- and we flip over to 22, it -- it
19 identifies Frequently Asked Questions on virtual
20 currency transactions.

21 And then there's also this 2019-24
22 guidance that supports that.

23 And then, you know, throughout the
24 report, as the report considers and analyzes
25 whether virtual currency such as XRP is a security

1 for federal income tax purposes, it cites other
2 authorities that support the conclusion that there
3 is authoritative guidance issued and that guidance
4 continues to represent the IRS's public position
5 on virtual currency such as XRP.

6 Q. Okay. Let's move on to the second --
7 second question that you were asked to answer in
8 your report.

9 Can you tell us in summary what you were
10 asked to answer in your second opinion?

11 A. Yeah. I'm just -- I'm going to read it
12 just to be accurate.

13 "Does that or any other guidance
14 classify virtual currency such as XRP as a
15 security for federal income tax purposes?"

16 Q. Okay. So -- and can you tell us the
17 opinion you formed in response to the question in
18 paragraph 8(b)?

19 A. Yes, I -- I can -- I can tell you the
20 opinion I formed. So the opinion I formed is that
21 the existing guidance does not classify virtual
22 currency such as XRP as a security for federal
23 income tax purposes.

24 Q. Is that the complete opinion that you
25 formed in response to the Question 8(b)?

1 A. There's more. To the best of my
2 knowledge, the IRS has not classified virtual
3 currency as a security for federal income tax
4 purposes and any regulation, rule, public
5 proceeding or any other guidance.

6 And I'm also not aware of any federal
7 income tax statute, administrative rule, or
8 judicial decision that classifies virtual
9 currency as a security for federal income tax
10 purposes or concludes the federal income tax
11 definition of security includes virtual currency.

12 Q. Okay. What is your meaning of security
13 in paragraph 9(b) of your opinion?

14 A. So paragraph 28 of the report begins the
15 analysis of what -- of how federal income tax law
16 defines security.

17 Q. So can you -- is there a specific
18 definition that you're referring to?

19 MR. FORD: Object to the
20 form.

21 A. Okay. So the -- the report -- the
22 report says "federal income tax law does not have
23 a single definition of securities that applies
24 throughout the code."

25 Q. Okay. When you're using the term

1 "security" in your opinion, how are you using that
2 term?

3 A. So my opinion addresses whether virtual
4 currency such as XRP comes within the federal
5 income tax definition of security.

6 Q. All right. And I believe in paragraph
7 9(b) you state that virtual currency such as --
8 the answer is no. "Existing guidance does not
9 classify virtual currency such as XRP as a
10 security for" tax purposes.

11 So what do you mean by "security" in
12 that sentence that -- in your opinion?

13 MR. FORD: Object to the
14 form and to the characterization of
15 the report.

16 A. Yeah. So my opinion says that virtual
17 currency such as XRP is not classified as a
18 security for federal income tax purposes.

19 Q. Earlier you stated that there are
20 different definitions of security for federal
21 tax -- income tax purposes.

22 So which definition are you assigning
23 here in your Opinion 9(b) to the -- to security?

24 A. Right.

25 MR. FORD: Object to the

1 form.

2 Go ahead.

3 A. So I am saying that there are multiple
4 definitions of security in federal income tax law
5 and virtual currency such as XRP does not come
6 within any of those definitions.

7 Q. Okay. What is the difference between
8 the question you're answering in 8(a) and 8(b) of
9 your opinion?

10 MR. FORD: Object to the
11 form.

12 A. So 8(a) specifically asks about whether
13 there's authorita -- whether authoritative
14 guidance exists. And then 8(b) asks whether that
15 authoritative guidance classifies virtual currency
16 such as XRP as a security for federal income tax
17 purposes.

18 Q. Okay. Now, can you walk me through the
19 basis of your opinion that the Notice 2014 and
20 other guidances do not classify virtual currency
21 as a security for tax purposes?

22 MR. FORD: Object to the
23 form of the question.

24 MS. ZORNBERG: Ms. Guerrier,
25 may I ask you to keep your voice up?

1 MS. GUERRIER: Sure.

2 MS. ZORNBERG: Thank you.

3 A. Would you repeat that question?

4 Q. So can you provide the basis for your
5 opinion in paragraph 9(b)?

6 A. Okay. So 9(b) says that there is no
7 guidance that classifies virtual currency such as
8 XRP as a security for federal income tax purposes.
9 And I'm also unaware of any federal income tax
10 statute, administrative rule or judicial decision
11 that classifies virtual currency as a -- as a
12 security for federal income tax purposes or
13 concludes that the federal income tax definition
14 of security includes virtual currency.

15 And I then said that -- so the analysis,
16 first of all, looks at the definition of -- of
17 security.

18 Q. Where did you specifically look for the
19 definition of security?

20 A. I looked in the Internal Revenue Code.

21 Q. Which specific sections of the Internal
22 Revenue Code did you refer to?

23 A. So if you look at paragraph 29. So that
24 identify -- paragraph 9 (sic), Footnote 42,
25 identifies the definition of security in Section

1 165(g)(2) and Section 1236(c).

2 Footnote 43 refers to Section -- a
3 definition of security in Section 475(c)(2).

4 Q. What is Section 165(g)(2) of the
5 Internal Revenue Code?

6 A. I -- I don't know if I understood.
7 Section 165(g)(2) is in the Internal Revenue Code.

8 Q. I said what is it? What does the
9 section address?

10 A. So Section 1 -- do you happen to have a
11 copy of it?

12 Q. I'm citing to -- I'm referring to your
13 report.

14 A. Yeah. So if you look in Section -- at
15 Footnote 42, it says "165(g)(2) defines security
16 for purposes of the worthless-security rules."

17 Q. Okay. So what is the opinion that
18 you're offering regarding the application of
19 165(g)(2) here?

20 A. My -- my opinion is that --

21 MR. FORD: Sorry. Hold on
22 one second.

23 Your question's done?

24 MS. GUERRIER: Yes.

25 MR. FORD: Okay. Object to

1 the form of the question.

2 Just make sure that she's fully
3 finished and give it a beat.

4 THE WITNESS: Okay.

5 A. My opinion is that virtual currency such
6 as XRP does not come within the definition of
7 security used in Section 165(g)(2).

8 Q. And Section 165(g)(2) addresses what
9 type of property?

10 A. Section 165(g)(2) defines security.

11 Q. Mm-hmm. And what specific security does
12 Section 165(g)(2) define?

13 A. Okay. Yeah.

14 MR. FORD: Object to the
15 form of the question.

16 A. As Section 165 -- as Footnote 42
17 provides, Section 1 -- Section -- Section
18 165(g)(2) defines security for the purpose of
19 worthless-security rules as -- this is a quote --
20 "A, a share of stock in a corporation; B, a right
21 to subscribe for, or to receive, a share of stock
22 in a corporation; or, C, a bond, debenture, note,
23 or certificate, or other evidence of indebtedness,
24 issued by a corporation or by a government or
25 political subdivision thereof, with interest

1 coupons or in registered form."

2 Q. Does Section 165 address losses under
3 the Federal Tax Code?

4 MR. FORD: Object to the
5 form.

6 A. So, yeah, Section 165 does address
7 losses under the Internal Revenue Code.

8 Q. So is the definition of securities under
9 Section 165(g)(2) in the context of losses under
10 the Internal Revenue Code?

11 MR. FORD: Object to the
12 form.

13 A. So, yeah. So 165(g)(2) is providing a
14 definition with respect to losses that relate to
15 worthless securities.

16 Q. Okay. And what other section did you
17 identify where the term "security" was used in
18 your report?

19 A. Section 1236(c).

20 Q. Okay. And what does Section 1236 of the
21 Internal Revenue Code address?

22 A. So --

23 MR. FORD: Object to the
24 form.

25 A. So Section -- Section 1236 of the

1 Internal Revenue Code deals with the character of
2 gain or losses recognized by a dealer in
3 securities.

4 Q. Okay. So the definition of securities
5 under Section 1236 refers to the character of gain
6 or losses in the context that you've described?

7 MR. FORD: Object -- object
8 to the form of the question.

9 A. Yeah. The definition in 1236(c)(2) --
10 yeah. Actually, it might be helpful if we look at
11 the -- at the opinion because the opinion says
12 that the -- the code has these rules that apply
13 specifically to securities. And so there's a rule
14 in Section 1236 that applies specifically to
15 securities. And in many situations the section of
16 the code will include -- that -- that provides a
17 rule to securities will include a definition of
18 securities that defines the scope of that rule.

19 Q. So there -- are there multiple
20 definitions of security under the Internal Revenue
21 Code?

22 MR. FORD: Object to the
23 form.

24 A. Yes, there -- federal income tax law
25 does not have a single definition of securities

1 that applies throughout the code.

2 Q. Okay.

3 A. Particular security specific exceptions
4 often include their own particular definition of
5 securities.

6 So there are multiple definitions of
7 securities in the Internal Revenue Code.

8 Q. Are you -- are you providing any opinion
9 regarding the status of XRP as a security under
10 the federal securities laws?

11 A. No.

12 Q. Okay. Can you tell me the documents
13 that you relied upon for your opinion in 9(a) --
14 I'm sorry, 9(b)?

15 A. So 9(b) -- so 9(b) says that the IRS has
16 not issued guidance that classifies virtual
17 currency such as XRP as a security. And to the
18 best of my knowledge -- well, it also says "I'm
19 unaware of any federal income tax statute,
20 administrative rule, or judicial decision that
21 classifies virtual currency as a security for
22 federal income tax purposes."

23 And so you asked what documents I relied
24 upon for that conclusion. The analysis of what --
25 of the definition of security begins in earnest

1 with paragraph 28. And that analysis runs through
2 the end of the report. So, I mean, I'm happy
3 to --

4 Q. Well --

5 A. -- walk through footnote by footnote and
6 identify each of the -- each of the -- each of
7 the -- the sources that I relied upon if you'd
8 like.

9 Q. All the documents that support your
10 opinion in 9(b) are included in your report?

11 A. Yes.

12 Q. Okay. Are they cited in the footnotes
13 to the report in the paragraphs that you just
14 described?

15 A. I -- I believe all of them are in the
16 footnotes.

17 Q. So in footnote -- I'm sorry.

18 In paragraph 9(b) of your opinion, is
19 your opinion based on the assumption that XRP is a
20 virtual currency?

21 MR. FORD: Object to the
22 form of the question.

23 A. So as I -- as I said earlier, I
24 understand that XRP is a virtual currency.

25 Q. So is the opinion based on the

1 assumption that XRP is a virtual currency?

2 MR. FORD: Object to the
3 form. Asked and answered.

4 A. Yeah. I don't know if I'm perfectly
5 familiar with the term "assumption."

6 Q. Did you assume that XRP is a virtual
7 currency in formulating your Opinion 9(b)?

8 MR. FORD: Object to the
9 form of the question.

10 A. Yeah. I didn't have to make that
11 assumption.

12 Q. Why not?

13 A. Because as -- as we discussed earlier,
14 Notice 2014-21 defines what virtual currency is
15 and we have the characteristics of XRP in -- in
16 section -- in paragraph 11 of the report. And
17 based on those characteristics, it comes with --
18 XRP comes within the definition of virtual
19 currency as defined in Notice 2014-21.

20 And then, also, if you look at paragraph
21 12, there's a -- it says "United States Attorney's
22 Office for the Northern District of California
23 expressly recognized XRP as virtual currency."

24 Q. Yeah.

25 A. So I don't have to make the assumption.

1 It's been stated that XRP is virtual currency.

2 Q. Does the opinion or decision by the
3 United States Department of Justice govern what
4 securities laws are applicable to an asset?

5 MR. FORD: Object to the
6 form of the question. Beyond the
7 scope.

8 A. I don't know.

9 Q. So why are you relying on the definition
10 of the Justice Department for virtual currency to
11 apply that to XRP?

12 MR. FORD: Object to the
13 form of the question.

14 A. So the -- the -- it's a -- it's a
15 settlement with the -- between -- well, it's with
16 the U.S. Attorney and it specifically says that
17 XRP is virtual currency.

18 Q. Do you know what type of case was before
19 the U.S. Attorney when that determination was
20 made?

21 A. Very generally.

22 Q. So did you do any inquiry to determine
23 whether this case is applicable to the XRP that's
24 at issue in this case?

25 MR. FORD: Object to the

1 form of the question.

2 A. I -- I read the settlement and I know it
3 referred to XRP. That said XRP is virtual
4 currency.

5 Q. So based upon the U.S. Attorney's
6 decision that -- or statement in a document that
7 XRP is a virtual currency, you used that as a
8 basis for your opinion that XRP is a virtual
9 currency in your report?

10 MR. FORD: Object to the
11 form of the question.

12 Mischaracterizes the testimony.

13 A. So I -- I rely upon the definition of
14 virtual currency in Notice 2014. I rely upon the
15 characteristics of XRP to say that XRP is virtual
16 currency. And then I also look at the U.S.
17 Attorney's Office settlement that says that XRP is
18 virtual currency.

19 Q. So are you opining that the documents
20 that you identified control the definition of
21 virtual currency as that relates to XRP?

22 MR. FORD: Object to the
23 form of the question.

24 A. So I am -- my -- so I have determined
25 that there's a definition of virtual currency in

1 Notice 2014-21. There were characteristics of XRP
2 that I identified in paragraph 11. And XRP is
3 virtual currency under that definition based upon
4 these characteristics.

5 Also, we have the -- the sources in --
6 cited in -- on paragraph 12 where XRP is referred
7 to specifically as virtual currency and identified
8 specifically as virtual currency.

9 Q. And you are referring to the Department
10 of the Treasury's Financial Crimes Enforcement
11 Network and the United States Attorney's Office's
12 statements about XRP --

13 A. Correct.

14 Q. -- in paragraph 12?

15 A. Correct.

16 Q. Have we discussed all the bases for your
17 opinion in paragraph 9(b) of your report?

18 A. I've identified where the support is for
19 my opinion in -- in paragraph 9(b).

20 Q. Okay. Is there anything else that we
21 haven't discussed with regard to your opinion in
22 paragraph 9(b)?

23 MR. FORD: Object to the
24 form of the question. Asked and
25 answered.

1 A. Yeah, I think I've identified it.

2 Q. Okay.

3 A. Yeah.

4 Q. What is the third opinion that you
5 formulated in this case?

6 A. So the quest -- the third question was
7 "From the perspective of federal income tax
8 law" -- and that's focusing on the period prior to
9 December 22nd, 2022 (sic), when the complaint was
10 filed in this matter -- "would a reasonable buyer
11 or seller expect virtual currency such as XRP to
12 be classified as a security for federal income tax
13 purposes and qualify for application of federal
14 income tax rules specific to securities?" So
15 that's the question.

16 And my answer is -- is -- is, "No. A
17 reasonable buyer or seller of virtual currency
18 such as XRP would not expect it to be classified
19 as a security for federal income tax purposes or
20 to qualify for federal income tax treatment
21 specific to securities."

22 Q. Okay. What do you mean by "reasonable
23 buyer" in your opinion?

24 MR. FORD: Object to the
25 form and to the characterization.

1 A. So if you look at paragraph 22, it says
2 that "In my experience, and as a general matter,
3 reasonable buyers and sellers of property take the
4 tax treatment" into consideration when they're
5 making commercial decisions. And then it also
6 talks about how they take those considerations
7 into account when deciding whether, when, and how
8 to buy property.

9 So a reasonable buyer -- reasonable
10 buyers and sellers is -- is that group of people.

11 Q. What standard are you using to define
12 the term "reasonable"?

13 MR. FORD: Object to the
14 form of the question.

15 A. Yeah. I -- I -- I think that paragraph
16 22 identifies the standard. I'm using my
17 experience and speaking generally.

18 Q. Have you provided an expert opinion on
19 reasonableness prior to this case?

20 MR. FORD: Object to the
21 form of the question.

22 A. I have been hired in malpractice cases
23 to provide testimony as to whether attorneys have
24 breached their standard of care.

25 Q. Okay.

1 A. And the definition of standard of care
2 often includes reasonable.

3 Q. Okay. Is the issue of a breach of a
4 standard of care in this case present?

5 MR. FORD: Object to the
6 form of the question.

7 A. So the -- the issue of standard of care
8 for an attorney is not present in this case.

9 Q. So are you providing a legal opinion on
10 reasonableness in this case?

11 MR. FORD: Object to the
12 form of the question.

13 A. So my opinion addresses behavior and
14 action of reasonable buyers and sellers.

15 Q. Right.
16 So you used the term "reasonable." So
17 is that a legal term that you're using in your
18 opinion?

19 MR. FORD: Object to the
20 form of the question.

21 A. In my opinion I'm speaking generally
22 based upon my experience.

23 Q. Why are you providing an opinion on
24 reasonableness in this report?

25 MR. FORD: Object to the

1 form of the question and to the
2 characterization of the report and
3 the testimony.

4 A. Yeah. So I was asked "Would a
5 reasonable buyer or seller expect virtual currency
6 such as XRP to be classified as a security for
7 federal income tax purposes?"

8 So I provided my opinion as to whether a
9 reasonable buyer or seller would expect virtual
10 currency such as XRP to be classified as a
11 security for federal income tax purposes.

12 Q. Did counsel ask you to provide an
13 opinion about a reasonable buyer and seller of
14 XRP's actions?

15 MR. FORD: Object to the
16 form of the question, the
17 characterization of the report.

18 A. They asked me to provide an opinion as
19 to whether a reasonable buyer or seller would
20 expect virtual currency such as XRP to be
21 classified as a security for federal income tax
22 purposes.

23 Q. Okay. Can you walk me through the facts
24 that you relied on in support of your opinion in
25 response to the question in 8(c)?

1 A. Sure. So if you go to beginning with
2 paragraph 22 of the report. So it -- it talks in
3 there about the -- first of all, there's
4 Frequently Asked Questions on virtual currency
5 transactions issued by the IRS which shows that
6 reasonable buyers and sellers of virtual currency
7 want to know what the tax treatment is when they
8 transact in virtual -- virtual currency.

9 And then, as you continue through the
10 analysis, you'll -- you'll -- the -- the report
11 discusses the general property transaction rules
12 and --

13 Q. I asked about the facts in support of
14 your opinion --

15 MR. FORD: Sorry. Were --
16 were you done with your answer before
17 she started?

18 MS. GUERRIER: Well, I'm
19 redirecting him to the answer -- the
20 question that I asked.

21 MR. FORD: Okay. But I'd
22 ask that you let him finish his
23 answer before you ask the next
24 question.

25 MS. GUERRIER: I believe he

1 was done.

2 MR. FORD: That's why I
3 asked him.

4 Were you done?

5 THE WITNESS: I -- I -- we
6 can move on.

7 BY MS. GUERRIER:

8 Q. Okay. Can you -- I'm not asking for the
9 analysis that you conducted. I'm asking you for
10 the facts that support your opinion that you
11 formulated in paragraph 9(c) of your report.

12 A. And I was --

13 MR. FORD: Okay. I'm sorry.
14 Object to the form. Asked and
15 answered, or attempted to answer.

16 So you can resume your answer.
17 Continue.

18 A. Yeah. I was answering based upon my
19 understanding of the question.

20 Q. So what are the facts that you relied
21 upon in formulating your opinion in 9(c)?

22 MR. FORD: Same objection.

23 A. So the -- the -- one fact is this, the
24 Frequently Asked Questions issued by the IRS. And
25 as the report says, "This signals that reasonable

1 buyers and sellers of virtual currency seek
2 guidance regarding the federal income tax
3 classification and tax consequences of
4 transactions of such virtual currency." So that
5 would be -- that would be one fact that I relied
6 upon.

7 And then, also, we have the body of law
8 that deals with property transactions.

9 Q. Is that a fact?

10 MR. FORD: Sorry. Again,
11 Counselor, if he's not done
12 answering --

13 MS. GUERRIER: I think
14 you're the one interrupting here.
15 Okay? I -- I'm listening to him. So
16 if you would stop interrupting every
17 time I try to ask a question --

18 MR. FORD: You were
19 interrupting his answer --

20 MS. GUERRIER: He was --
21 this would work --

22 (Indiscernible cross talk;
23 reporter requests one speaker.)

24 MR. FORD: This is the
25 second time you've interrupted his

1 answer --

2 MS. GUERRIER: I don't need
3 you to reprimand me about -- can we
4 go off the record for one second,
5 please?

6 MS. ZORNBERG: I think we
7 should stay on the record.

8 MR. FORD: There's --
9 there's nothing to go off the record
10 about.

11 MS. GUERRIER: Well, I don't
12 need you to interrupt me --

13 MR. FORD: It's not --

14 (Indiscernible cross talk;
15 reporter requests one speaker.)

16 MR. FORD: If he's not
17 finished with an answer, I'd ask that
18 you let him finish his answer before
19 you begin your next question.

20 MS. GUERRIER: I've done
21 that. And I've -- I've asked -- I'm
22 asking that you stop cutting me off
23 and interrupting me every time I try
24 to ask a question.

25 MR. FORD: Were you finished

1 with your answer when she asked her
2 next question?

3 THE WITNESS: I was -- I was
4 talking about what I understand the
5 facts to be that I relied upon in
6 this -- in this opinion.

7 MR. FORD: Okay.

8 THE WITNESS: The expert
9 opinion.

10 BY MS. GUERRIER:

11 Q. Okay. Can restate the facts that you
12 relied upon in support of your opinion --

13 A. Right.

14 Q. -- in paragraph 9(c)?

15 A. Yes.

16 MS. GUERRIER: Object to the
17 form. Asked and answered.

18 Go ahead.

19 A. So, again, there's the Frequently Asked
20 Questions on virtual currency transactions that's
21 identified in paragraph 22. And that shows that
22 reasonable buyers and sellers of virtual currency
23 want to have guidance from the IRS. So that's one
24 fact.

25 And then, also, if you proceed through

1 the report, you see that the report talks about
2 the general property transaction rules.

3 Q. Did you rely on any evidentiary facts in
4 this case in support of your opinion?

5 A. What do you mean by --

6 MR. FORD: Object -- I'm
7 sorry. Object to the form of the
8 question.

9 Q. Did you rely on any facts from the
10 record that you reviewed in support of this case?

11 MR. FORD: Object to the
12 form of the question.

13 A. So the documents I received are --
14 they're cited in those -- in those footnotes, 7
15 through 16.

16 Q. Okay.

17 A. I relied upon those in forming my
18 opinion.

19 Q. Okay. Now, what are the specific
20 documents that you relied upon in support of your
21 opinion?

22 MR. FORD: Object to the
23 form of the question. Asked and
24 answered.

25 A. Are we -- what part of the -- are we

1 talking about a specific part of the opinion?

2 Q. What documents did you rely upon in
3 support of your opinion? And I'm referring to the
4 opinion in 9(c).

5 A. In 9(c)?

6 Q. Yes.

7 MR. FORD: Object to the
8 form of the question.

9 A. So -- so, as -- as I said, the analysis
10 for 9(c) begins in paragraph 22 and the footnotes
11 cite what was relied upon as far as documents
12 received from counsel. That's in Footnotes 7
13 through 16.

14 Q. Okay. What specific documents did you
15 rely on in support of your opinion in 9(c)?

16 MR. FORD: Object to the --

17 BY MS. GUERRIER:

18 Q. Can you identify those documents?

19 A. Will you --

20 MR. FORD: Object to the
21 form of the question. Asked and
22 answered.

23 A. Will you be specific about what you mean
24 when you say "documents"?

25 Q. Do you understand what a document is?

1 A. No.

2 Q. Okay. Is the paper in front of you a
3 document?

4 A. I don't understand what a document is,
5 so I wouldn't -- wouldn't know. I've seen
6 contracts that are sometimes called documents.

7 Q. I'm asking you for the documents that
8 you relied on in your report in --

9 A. I'm asking --

10 Q. I'm sorry.

11 A. And I'm asking, what do you mean by
12 "document"?

13 Q. I'm talking about a document like paper
14 and similar types of documents that you relied on
15 in support of your opinion in paragraph 9(c).

16 MR. FORD: Object to the
17 form of the question.

18 A. So is a document anything that is
19 delivered in paper form?

20 Q. What is your understanding of a
21 document?

22 A. Well, I think it can have specific
23 meanings.

24 Q. What is your understanding of a
25 document?

1 MR. FORD: Sorry. Object to
2 the form of the question and asked
3 and answered.

4 A. It can have various meanings.

5 Q. Okay. Can you tell me what you think is
6 a document?

7 MR. FORD: Object to the
8 form of the question. Asked and
9 answered.

10 A. I can give you an example of a document.

11 Q. Okay.

12 A. A contract is sometimes referred to as a
13 document.

14 Q. Okay. Is there any data that you relied
15 upon in support of your opinion in 9(a)?

16 MR. FORD: Object to the
17 form of the question.

18 A. Can you be more specific about what you
19 mean by "data"?

20 Q. Earlier today you testified that you
21 did receive documents from the attorneys in this
22 case.

23 What specific documents did you rely on
24 in support of your opinion in 9(a) -- in 9(c)?

25 I'm sorry.

1 MR. FORD: Object to the
2 form of the question. Asked and
3 answered.

4 A. Yeah. So -- so I said that I received
5 documents in Section -- identified in Footnote 7
6 through 16 from counsel.

7 Q. Okay. Did you rely on those documents
8 in support of your opinion in 9(a) -- I'm sorry,
9 9(c) -- of your opinion in 9(c)?

10 MR. FORD: Object to the
11 form of the question.

12 A. So -- so 9(c) references virtual
13 currency such as XRP. And as -- as I've -- so
14 virtual currency such as XRP. I'd start with
15 Notice 2014-21 which defines virtual currency.
16 And then we have the characteristics in paragraph
17 11 of XRP. So I used the definition in Notice
18 2014 and the characteristics in -- in paragraph 11
19 to determine that virtual -- that XRP is a virtual
20 currency.

21 And then, also, paragraph 12 has the
22 U.S. Department of -- has the FinCEN settlement
23 and, also, the United States Attorney's Office
24 settlement that's cited there that says XRP is
25 virtual currency.

1 So I relied upon those when I say that a
2 reasonable buyer or seller would expect virtual
3 currency such as XRP to be classified as a
4 security for federal income tax purpose.

5 So I'm relying upon those documents when
6 I'm talking about what a reasonable buyer or
7 seller would do with respect to virtual currency
8 such as XRP.

9 Q. Did you make any assumptions in support
10 of your opinion in paragraph 9(c)?

11 MR. FORD: Object to the
12 form of the question.

13 THE WITNESS: Oh, thank you.

14 A. I -- I can't think of any assumptions
15 that I make to form my opinion in 9(c).

16 Q. Can you walk me through the analysis
17 that you conducted in support of the opinion?

18 A. Sure.

19 MR. FORD: Object to the
20 form of the question.

21 Do you mean in 9(c)
22 specifically?

23 BY MS. GUERRIER:

24 Q. Do you understand the question?

25 A. If you would ask it again. Ask it

1 again, please.

2 Q. Okay. Can you walk me through the
3 analysis that you conducted in support of your
4 opinion that we've been talking about for a few
5 minutes now in 9(c) that you just read?

6 A. Yes.

7 Q. Okay. Could you please walk me through
8 the analysis?

9 A. Of the opinion in 9(c)?

10 Q. Yes.

11 A. Okay. So 9(c) is talking about a
12 reasonable buyer and a reasonable -- and a
13 reasonable seller. And, again, the question is
14 whether a reasonable buyer or -- or seller would
15 expect virtual currency such as XRP to be
16 classified as a security for federal income tax
17 purposes and qualify for application of federal
18 income tax rules specific to securities.

19 So that analysis really begins on page
20 11 with paragraph 22.

21 Q. Okay. What analysis are you conducting
22 in paragraph 22?

23 A. So in paragraph 22, setting the stage to
24 say that reasonable buyers and sellers of property
25 take tax treatment into -- into account when

1 they're making decisions whether to and when and
2 how to buy or sell property. And so it says
3 that -- that reasonable buyers and sellers take
4 the tax considerations into account.

5 And then it gets into a discussion of
6 what are the tax considerations? And federal
7 income tax provides general property transaction
8 rules that apply to property transactions unless
9 there's a specific exception that a -- that
10 provides otherwise.

11 And then, if you look at page 12, it
12 provides a very high-level overview of what the
13 general property transaction rules are. It talks
14 about how federal income tax treats the
15 acquisition of property. And it talks about that
16 if a person acquires property for services, then
17 the value of the property received would be
18 included in gross income.

19 And, also, if a person acquires property
20 by windfall, then the -- the value of that
21 property could also be included in income. And
22 it cites to cases and regulations that support
23 that conclusion.

24 And then if you have a situation where a
25 person acquires property for cash, then there's no

1 gross income on that acquisition.

2 Q. Okay.

3 A. And then, also, in a -- if there's an
4 exchange of property, then generally that can give
5 rise to gross income based upon the fair market
6 value of the property received.

7 Q. Were you done?

8 A. No. I can keep going. I don't know
9 what level...

10 Q. All right. Well, let me ask you about
11 the general property transaction rules.

12 A. Sure.

13 Q. What are the general property
14 transaction rules that you're referring to in your
15 report?

16 A. So those are on page 12. I was just
17 starting to go through how they apply to
18 acquisitions.

19 Q. Okay. So do all property fall under the
20 general transaction -- general property
21 transaction rules under the Internal Revenue Code?

22 A. So the -- the general property
23 transaction rules apply to all property unless
24 there's a specific exception that provides a rule
25 that differs from the general property transaction

1 rules.

2 Q. And when you talk about general property
3 transaction rules, are you talking, for example,
4 how to treat gain or loss on property?

5 A. So the general property transaction
6 rules, they -- they govern, generally speaking,
7 the acquisition, the holding, and the disposition
8 of property.

9 Q. Do the general property transaction
10 rules apply to XRP in general?

11 A. Yes.

12 MR. FORD: Object to the
13 form of the question. Sorry.

14 A. Yes. The general -- the general
15 property transactions would apply to XRP.

16 Q. Would the general property transaction
17 rules apply to a stock?

18 A. The general property transaction rules
19 apply to stock unless there's a specific exception
20 that provides otherwise.

21 Q. Okay. So is it possible for the general
22 property transaction rules to apply to a security
23 that is defined as a security under the federal
24 securities laws but not under the federal tax
25 laws?

1 MR. FORD: I'll object to
2 the form of the question.

3 A. Would you -- yeah. Would you ask that
4 again, please?

5 Q. Is it possible for the general property
6 transaction laws to apply to a security that is
7 defined as such under the federal securities laws
8 but not under the federal tax laws?

9 MR. FORD: Object to the
10 form of the question.

11 A. Yeah. So the general -- if you look on
12 page 11 in paragraph 23, it's talking about the
13 general property transaction rules. And it says
14 "In fact, the general property transaction rules
15 apply to all types of property: Real estate,
16 trucks, cows, commodities, virtual currency,
17 foreign currency, securities, (and many others)
18 unless a special, narrowly tailored exception
19 overrides the application of the general property
20 transaction rules."

21 Q. Okay. Can a digital asset be considered
22 a security for federal security laws but not a
23 security for federal tax purposes?

24 MR. FORD: Object to the
25 form of the question. Beyond the

1 scope.

2 A. Yeah. I can -- I can address whether --
3 so we have the IRS guidance that applies to
4 virtual currency. And so I -- I can talk about
5 the federal income tax treatment of something that
6 comes within the definition of -- of virtual
7 currency. I don't -- I don't have familiarity
8 with the securities laws to -- yeah, to know how
9 to answer that question.

10 Q. Do you know how options are treated
11 under the Internal Revenue Code?

12 MR. FORD: Object to the
13 form of the question. Beyond the
14 scope.

15 A. Yes.

16 Q. How are options treated under the
17 Internal Revenue Code?

18 A. So if you look at paragraph 47, it...

19 Q. What specifically in paragraph 7 are you
20 referring to?

21 A. Paragraph -- I'm sorry -- 47.

22 Q. 47?

23 A. Yes.

24 Q. Yes. What specifically in paragraph 47
25 are you referring to?

1 A. So if you look at Footnote 62, it cites
2 to Revenue Ruling 78-182. That discusses the
3 track -- the tax treatment of options traded on
4 the Chicago Board Options Exchange.

5 Q. So how are options treated under the
6 Internal Revenue Code?

7 MR. FORD: Object to the
8 form of the question.

9 A. So -- so this -- this revenue ruling
10 provides -- it provides very specific rules for
11 the taxation of options or transactions dealing
12 with options. And it provides that -- there's --
13 so there are multiple transactions that occurred
14 in -- in transactions involving options, right?
15 There's the purchase of the option and you have
16 the purchaser of the option and you have the
17 issuer.

18 And there's -- if you -- if you -- we
19 can talk through the rules in -- in detail if
20 you'd like, but this Revenue Ruling says what
21 happens -- what is the tax treatment when that
22 initial transaction occurs when somebody -- when
23 an option is issued and someone purchases an
24 option from the issuer? What are the tax
25 consequences there?

1 And then the option can lapse. And
2 Revenue Ruling 78-182 talks about what are the tax
3 consequences to the person who purchased the
4 option and the person who issued the option if the
5 option lapses?

6 And then the option can also be sold.
7 And this Revenue Ruling talks about what are the
8 tax consequences when an option are sold. And
9 finally an option can be exercised. And so this
10 Revenue Ruling talks about what are the tax
11 consequences when the option is exercised.

12 Q. Is the -- an option defined as a
13 security under the Internal Revenue Code?

14 A. So --

15 MR. FORD: Object to the
16 form of the question.

17 A. So if we look at the definition of
18 security or the section that talks about the
19 definitions of security, that's in paragraph 29.

20 Q. Okay.

21 A. So it says "As a general matter, the
22 federal income tax definitions of securities
23 includes stock, evidences of indebtedness, and
24 options to purchase and sell assets..."

25 And if we go down and look at, you know,

1 Footnote 42, which is cited there, so the
2 definition of security for purposes of the
3 worthless-security rules includes a right to
4 subscribe to -- to subscribe for, or receive, a
5 share of stock in a corporation.

6 And then if you look at Section 1236(c)
7 of the Internal Revenue Code, it provides a
8 definition of securities. It includes "any share
9 of stock in a corporation, certificate of stock or
10 interest in any corporation, note, bond,
11 debenture, or evidence of indebtedness, or any
12 evidence of an interest in or right to subscribe
13 to or purchase any of the foregoing."

14 Q. Were options always treated as
15 securities under the Internal Revenue Code?

16 MR. FORD: Object to the
17 form of the question. Beyond the
18 scope.

19 A. So if you look at the definition of
20 securities in Section 1091, there's a discussion
21 of Section 1091 which applies to the wash-sale
22 rules. If you look to that, you will see that
23 there's a case cited in Footnote 48 called Gantner
24 v. Commissioner. In that case the tax court held
25 that option does not come within the definition of

1 security for purposes of Section 1091.

2 Q. Okay. So as you sit here today, do
3 options come under the definition of securities
4 under Section 1091 of the wash-sale provisions of
5 the code?

6 A. Yes.

7 Q. So what happened from the time that the
8 tax court ruled that the -- options were not
9 securities for the purpose of wash-sale rules
10 until now that it's considered a security for
11 wash-sale purposes?

12 A. Right. Congress amended the statute to
13 provide that the term "stock" or "securities"
14 shall include contracts or options to acquire or
15 sell stock or securities. So Congress amended the
16 statute.

17 Q. So is it possible for a property that's
18 not currently a security under the federal tax
19 rules to become a security under the federal tax
20 rules?

21 MR. FORD: Object to the
22 form of the question.

23 A. Yes, it's -- it's -- I mean, that's an
24 example of where something that was ruled to not
25 be a security under a definition of security in

1 the Internal Revenue Code was later added to the
2 definition of security by Congress.

3 Q. Do you know if options were considered
4 securities for -- under the securities laws prior
5 to being considered a -- securities for federal
6 tax purposes?

7 A. I --

8 MR. FORD: Object to the
9 form of the question.

10 A. I missed the -- I missed the first part
11 of your question.

12 Q. Do you know whether options were
13 considered securities under the federal securities
14 laws prior to being considered securities under
15 the Internal Revenue Code?

16 MR. FORD: Object to the
17 form of the question.

18 A. Yeah. I'm not familiar with the
19 securities laws definition of securities.

20 Q. Okay. So is your opinion in this report
21 that because XRP has not yet been determined to be
22 a security for federal securities laws purposes,
23 that it can't be a security for federal tax
24 purposes?

25 MR. FORD: Object to the

1 form of the question.

2 A. So my opinion relies upon the definition
3 of virtual currency in Notice 2014-21 and it
4 relies upon the definition of security that
5 appears multiple times in the Internal Revenue
6 Code.

7 Q. And you're referring to the Internal --
8 Internal Revenue Code as it exists today?

9 A. So my opinion -- I was asked to give an
10 opinion as of December 22nd, 2020.

11 So my opinion would be based upon how
12 the Internal Revenue -- would be based on how
13 the -- what the law was on that date.

14 Q. Do you know if Congress is contemplating
15 including digital assets in the definition of
16 securities under the Internal Revenue Code?

17 MR. FORD: Object to the
18 form of the question.

19 A. So I cite in here Section 6045 in
20 Footnote 40.

21 Q. And what is Section 6045?

22 A. 6045 is a section -- it's actually
23 outside of the federal income tax rules, but
24 it's a provision of the Internal Revenue Code
25 that governs or provides rules for broker

1 reporting.

2 Q. Okay. So my question was whether you
3 are aware of any pending legislation by Congress
4 contemplating making digital assets securities for
5 federal tax purposes.

6 A. So --

7 MR. FORD: Sorry. Object to
8 the form of the question and to the
9 characterization of the prior
10 question.

11 You can answer.

12 A. So Section 6045 is part of the federal
13 tax laws. It's -- it's part of the Internal
14 Revenue Code. And Congress proposed adding
15 digital assets to the definition of specified
16 security.

17 Q. Okay. Would that be for wash-sale rule
18 purposes?

19 A. No.

20 Q. What exactly does the section
21 contemplate treating digital assets as
22 securities?

23 MR. FORD: Object to the
24 form of the question.

25 A. So 6045 has reporting rules that apply

1 to brokers. And so this amendment contemplates
2 requiring brokers to provide information related
3 to digital assets.

4 Q. Do you know if there's any pending
5 legislation as we sit here today where Congress is
6 contemplating including digital assets as
7 securities for wash-sale purposes?

8 MR. FORD: Object -- I'm
9 sorry. Object to the form.

10 A. I'm not aware of any legislation where
11 Congress is -- is contemplating determining
12 virtual currency within the definition of security
13 for Section 1091 purposes.

14 Q. Okay. So that -- that wasn't my
15 question. I'm talking about digital assets.

16 So are you aware of any pending
17 legislation where Congress is contemplating
18 treating digital assets as securities for the
19 wash-sale purposes?

20 MR. FORD: Object to the
21 form of the question and asked and
22 answered.

23 A. So I'm not aware of any pending
24 legislation related to the wash-sale rules that
25 would include within the definition of

1 securities -- I'm going to rely upon the
2 definition in this -- in -- in -- in Notice
3 2014-21.

4 So that would include a digital
5 representation of value in the definition of
6 securities for Section 1091 purposes.

7 Q. Are you aware of any pending legislation
8 that deals with digital assets for wash-sale rule
9 purposes?

10 MR. FORD: Object to the
11 form of the question.

12 A. Yeah. I'm not aware of any pending
13 legislation -- would -- would you repeat it again?

14 Q. Are you aware of any pending legislation
15 that deals with digital assets for purposes of the
16 wash-sale rules?

17 MR. FORD: Same objection.

18 A. Yeah. I would want to see the
19 definition of -- of digital assets.

20 Q. Okay.

21 A. But I...

22 Q. Are you done with your answer?

23 A. Yeah.

24 Q. Okay. Is it that you're not aware of
25 any such legislation that's pending before

1 Congress?

2 MR. FORD: Object to the
3 form of the question. Asked and
4 answered.

5 A. I'm not aware of any pending legislation
6 related to Section 1091 that would include within
7 the definition of securities what I -- what I just
8 said: A digital representation of value.

9 Q. Okay. So I -- I believe my question was
10 a bit broader. I was asking about any pending
11 legislation that would deal with digital assets
12 for wash-sale purposes.

13 MR. FORD: Object to the
14 form. Asked and answered now three
15 or four times.

16 A. I -- I don't know how else to answer
17 that question.

18 Q. Is the answer that you're not aware of
19 any such legislation that's pending before
20 Congress?

21 MR. FORD: Object to the
22 form of the question. Asked and
23 answered. And to the
24 characterization of the testimony.

25 A. Do -- do you want to ask your -- did you

1 ask if I'm aware of any legislation pending before
2 Congress?

3 Q. Regarding digital assets for wash-sale
4 purposes.

5 MR. FORD: Same objection.

6 A. The report talks about a legislate --
7 about legislation that is pending with Congress
8 under Section 1091.

9 Q. Okay. So is that the only legislation
10 that you're aware of that's cited in your report
11 that's pending before Congress?

12 A. With respect to Section 1091?

13 Q. Yes.

14 A. I'm not sure what the status of the
15 bills are. So, yeah, I -- I'm not sure. And
16 I'm -- I don't remember how it was introduced and
17 it was introduced into multiple bills and those
18 bills have been consolidated into one.

19 So I -- I -- yeah.

20 I'm aware of the one that's cited in the
21 materials, in the report, and -- and understand
22 that it is still pending before Congress.

23 Q. Okay.

24 MS. GUERRIER: Why don't we
25 take a ten-minute break.

1 THE VIDEOGRAPHER: The time
2 on the video monitor is 3:06 p.m.
3 End of Media Unit Number 4. Going
4 off the video record.

5 (Whereupon, a recess is taken.)

6 THE VIDEOGRAPHER: 3:21,
7 start of Media 5. Back on the video
8 record.

9 BY MS. GUERRIER:

10 Q. Professor Borden, is it your opinion
11 that the classification of XRP as a virtual
12 currency by the Department of Justice is
13 determinative of XRP's classification as a virtual
14 currency under the federal tax laws?

15 MR. FORD: Object to the
16 form of the question.

17 A. So I can do an analysis using Notice
18 2014-21 and the definition in there of virtual
19 currency and reach the conclusion that XRP is
20 virtual currency.

21 Q. Okay. Well, I think my question is
22 whether the Department of Justice's classification
23 of XRP as virtual currency is determinative of
24 XRP's classification as a virtual currency for
25 purposes of federal tax law.

1 MR. FORD: Same objection.

2 A. Would you say it again?

3 MR. FORD: I'm sorry. Yeah.

4 Same objection. Asked and answered.

5 Go ahead.

6 A. The first part in particular.

7 Q. Is it your opinion that the
8 classification of XRP as a virtual currency by the
9 Department of Justice is determinative of XRP's
10 classification as a virtual currency under the
11 federal tax laws?

12 MR. FORD: Same objection.

13 A. So the -- the -- the analysis is we have
14 the -- we have the settlement and we have -- with
15 the U.S. Department -- U.S. Attorney's Office and
16 FinCEN with -- regarding XRP, treating --
17 treated -- treating it as virtual currency.

18 If you look at -- if you look at Notice
19 2014-21, it cites to the FinCEN guidance that
20 defines virtual currency. So Notice 2014-21 draws
21 from the same -- draws from authority issued by
22 FinCEN, which was a party to the settlement
23 discussed therein, in paragraph 12.

24 So I -- I -- I -- I don't know that the
25 IRS would have to -- would be bound to rely upon

1 that charactera -- characterization, but it's
2 using the same authority that was used there to
3 determine -- to -- to define virtual currency. So
4 XRP would -- would be -- the -- the settlement and
5 the treatment of XRP as virtual currency in the
6 settlement is -- is, at a minimum, very persuasive
7 that it's virtual currency for federal income tax
8 purposes.

9 Q. Okay. And do you know whether the
10 Department of Justice's classification of a
11 property governs how a property is treated under
12 the federal tax laws?

13 MR. FORD: Object to the
14 form of the question.

15 A. So federal -- so federal tax law
16 originates with the -- with the Internal Revenue
17 Code and it's its own body of law.

18 And then there's case law that
19 interprets and addresses provisions in the
20 Internal Revenue Code. And those would be
21 authoritative with respect to the Internal Revenue
22 Code. The courts aren't bound necessarily by --
23 in applying the Internal Revenue Code by decisions
24 that relate to other bodies of law.

25 Q. Going back to your Opinion 9(c) where

1 you just opine about a reasonable buyer's and
2 seller's expectations, did you conduct any
3 experiment to test whether buyers and sellers of
4 XRP rely on what -- buyers and -- I'm sorry. Let
5 me -- did you conduct any experiments to test what
6 buyers and sellers of XRP rely on when making
7 decisions related to transactions of such virtual
8 currency as you described it in your report?

9 MR. FORD: Object to the
10 form of the question and to the
11 characterization of the report.

12 A. That was -- that was a long question.
13 Can you repeat the first part?

14 Q. Sure.

15 Did you conduct any experiment to test
16 whether buyers and sellers of XRP rely on when
17 making decisions related to transactions of -- I
18 quote in your paragraph 22 -- "such virtual
19 currency"?

20 MR. FORD: Object to the
21 form of the question.

22 A. Can -- can you be more specific about
23 what you mean when you use the term "experiment"?

24 Q. As an expert in federal tax law, do you
25 conduct any types of experiments with respect to

1 any matters that you're asked to opine about?

2 MR. FORD: Object to the
3 form of the question.

4 A. Yeah. Again, we have trouble with -- so
5 what do you mean by "experiment"?

6 Q. Did you conduct any tests to determine
7 whether buyers and sellers of XRP, what they rely
8 on when making decisions related to transactions
9 regarding a virtual currency?

10 MR. FORD: Object to the
11 form of the question and to the
12 characterization of the report.

13 A. Yeah. You're using terms that are --
14 that are hard -- "tests" can have multiple
15 meanings. Do you have -- can you be more specific
16 about -- can you give an example of what a -- what
17 tests you would be talking about?

18 Q. Well, what is your understanding of
19 "test" in the context of the question that I
20 posed?

21 MR. FORD: Object to the
22 form of the question and to the
23 characterization of his testimony.

24 A. Right. So, I mean, to keep it very
25 simple, I'm a law professor, right? So a test --

1 I mean, we give tests at the end of a semester.

2 Is that -- is that what you're referring
3 to?

4 Q. Did you go out and talk to buyers and
5 sellers of XRP to determine what they rely on when
6 they're making decisions related to transactions
7 regarding virtual currency?

8 A. No.

9 MR. FORD: I'm sorry.

10 Object to the form of the question.

11 Q. Did you conduct any survey of buyers and
12 sellers of XRP regarding what they rely on when
13 making decisions related to the transactions
14 regarding virtual currency?

15 MR. FORD: Object to the
16 form of the question.

17 A. No.

18 Q. Did you examine any data related to what
19 buyers and sellers of XRP rely on when making
20 decisions related to transactions regarding
21 virtual currency?

22 MR. FORD: Object to the
23 form of the question.

24 A. Can you be specific about "data"?

25 Q. Did you examine any document related to

1 what buyers and sellers of XRP rely on when making
2 decisions related to transactions regarding
3 virtual currency as you've described it in your
4 paragraph 22 of your report?

5 MR. FORD: Objection to the
6 form of the question and to the
7 characterization of the report.

8 A. So the -- the -- the report cites the
9 Frequently Asked Questions on virtual currency
10 transactions.

11 Q. What Frequently Asked Questions are you
12 referring to?

13 A. Look on page -- page 11, paragraph 22.

14 Q. Are you referring to the Frequently
15 Asked Questions in the Notice 2014-21?

16 A. So, yeah, 2014-21 includes Frequently
17 Asked Questions. From time to time, those
18 questions have been updated and republished -- or
19 Frequently Asked Questions on virtual currency
20 transactions have been updated and republished.

21 Q. Does the Notice 2014-21 including --
22 include any data related to what actual XRP buyers
23 and sellers rely on when making decisions
24 regarding transactions in XRP?

25 MR. FORD: Object to the

1 form of the question.

2 A. So I recall that I indicated earlier
3 that Rev -- that Notice 2014-21 doesn't include
4 any reference to XRP.

5 Q. Okay. Did you interview any XRP
6 purchasers?

7 A. No.

8 Q. Did you interview any XRP buyer --
9 sellers?

10 A. No.

11 Q. Going to the general property
12 transaction rules, how are -- how is property
13 that's held for investment treated for tax
14 purposes when there is a gain on that property?

15 MR. FORD: Object to the
16 form of the question.

17 A. So do you want to be more specific about
18 what you mean when there's a gain?

19 Q. If a holder of a property held for
20 investment sells that property, what is the gain
21 characterized from the holder's purchase?

22 MR. FORD: Object to the
23 form of the question.

24 A. So when -- when gain is recognized on
25 the sale of property, there's an analytical

1 framework to go through to determine what the
2 character of the gain is.

3 Q. Mm-hmm.

4 A. The asset, first of all, has to be a
5 capital asset. And it also -- if it's a capital
6 asset, the gain -- I'm trying to think if there's
7 an exception. The general rule -- I'm going to
8 say what the general rule is. When a capital
9 asset is sold, the gain recognized on the sale of
10 that capital asset would be a capital gain.

11 Q. How -- how would a gain on an asset
12 that's held -- that is used in the ordinary course
13 of business be treated under the Internal Revenue
14 Code?

15 MR. FORD: Objection to the
16 form of the question.

17 A. So if -- if you look at the definition
18 of capital asset, it excludes from the definition
19 property held for use in a trade or business
20 that's subject to depreciation and it also
21 excludes real property held for use in a trade or
22 business. And then there's another provision,
23 Section 1231, that talks about how to determine
24 the character of gain or loss on the sale of that
25 type of asset.

1 Q. Okay. So what kind of form would an
2 entity who had a gain on capital assets file with
3 the IRS to report the gain on the capital asset?

4 MR. FORD: Object to the
5 form of the question.

6 A. Yeah. I'd have to go back and look at
7 the exact -- I don't remember the exact number of
8 the form.

9 Q. Are you familiar with the Schedule D?

10 A. I have familiarity with Schedule D, but
11 I don't -- I have -- I have very limited
12 familiar -- familiarity with Schedule D.

13 Q. Have you ever seen a Schedule D?

14 A. I've probably seen Schedule Ds.

15 Q. In your tax practice, have you ever
16 filled out a Schedule D for a client?

17 A. I would think I have not.

18 Q. I'm sorry?

19 A. I'm pretty sure I have not.

20 Q. Okay.

21 MS. GUERRIER: I'm not --
22 I'm going to hand this out. I'm not
23 going to mark them. I just want
24 to --

25 MR. FORD: Well, let's give

1 it a number just for --

2 MS. GUERRIER: Yeah.

3 MR. FORD: In case we need
4 to reference it.

5 MS. GUERRIER: Actually,
6 I'll mark it. So I think this is
7 going to -- we'll just show --

8 MR. FORD: Yes. Do you want
9 to give both copies to the reporter
10 so she can put a sticker on it?

11 THE REPORTER: What did you
12 want to mark it as?

13 MS. GUERRIER: I believe
14 that's Number 4? Is that Exhibit 4?
15 I think we marked --

16 THE REPORTER: No, I think
17 we might be up to 6 or 7 here. I'll
18 make it Exhibit 6 and if that's
19 wrong, I'll fix it.

20 (Whereupon, exhibit is
21 presented and marked SEC Borden
22 Deposition Exhibit 6 for identification.)

23 BY MS. GUERRIER:

24 Q. I've handed you what's been marked
25 Exhibit 6.

1 Have you ever seen this type of
2 document?

3 A. I'm sure I have.

4 Q. Okay. Are you familiar with the
5 Schedule D that I've handed you?

6 A. I -- I -- like I said, I -- I've
7 probably seen it. I don't prepare tax returns.

8 Q. Okay. So in -- in your expert capacity,
9 is -- would a Schedule D be outside of the scope
10 of your expertise?

11 A. Yes --

12 MR. FORD: Object to the
13 form of the question. I'm sorry.

14 Q. Okay. Are you --

15 A. Well, knowledge about schedule D is
16 outside the scope of my expertise.

17 Q. Okay. So in your tax practice, do you
18 have clients that report capital gains --

19 MR. FORD: Object to the
20 form.

21 Q. -- to the IRS?

22 A. I'm sure I --

23 MR. FORD: Sorry. Object to
24 the form of the question.

25 A. I'm sure I do.

1 Q. Okay. Do you provide any advice to any
2 clients regarding how to report capital gains to
3 the IRS?

4 A. So -- so transactional tax lawyers
5 provide advice with respect to transactions. And
6 a question may come up, one that you alluded to
7 earlier, is an asset a capital asset? And if it's
8 not a capital asset, are there things that could
9 be done for it to be characterized as a capital
10 asset? And so the tax advisor would help with
11 that question.

12 And then after helping to say that
13 the -- that the -- that the goal is to have an
14 asset be treated as a capital asset and do what
15 is necessary to have it be treated as a capital
16 asset, the asset is then sold. At that point the
17 tax advisor may not be involved. Information
18 would -- would be provided to the return preparer
19 and the return preparer at that point, you know,
20 would work -- may reach out to the tax advisor or
21 may complete the tax return.

22 Q. In your CPA practice, did you ever
23 encounter a Schedule D?

24 A. I -- I went from undergraduate into the
25 master's M.B.A. program and went from the M.B.A.

1 program directly into law school, and then from
2 law school I went directly into law practice. So
3 I -- I -- I never had a practice preparing tax
4 returns.

5 Q. Okay. Do you know how capital gains
6 would be reported to the IRS based on your
7 experience with federal tax laws?

8 MR. FORD: Object to the
9 form of the question. Beyond the
10 scope.

11 A. So they -- they -- they would be -- be
12 reported on -- on a tax return.

13 Q. Okay.

14 A. But how the tax return is prepared and
15 what line of the -- of a Schedule D they would go
16 on, whether they're listed in the aggregate or
17 netted, these are things that -- that I don't --
18 it's beyond the scope of what -- of what I do.

19 Q. Would they reported as capital gains to
20 the IRS?

21 MR. FORD: Object to the
22 form of the question.

23 A. So if somebody sells a capital asset and
24 recognizes gain on the disposition of that capital
25 asset, that gain should be reported as a capital

1 gain to the IRS.

2 Q. Okay. Did you state earlier that,
3 excuse me, property held for sale in the ordinary
4 course of business would not be considered a
5 capital asset?

6 A. What I --

7 MR. FORD: Object -- sorry.

8 Objection to the form and to the
9 characterization of the testimony.

10 A. I believe what I said earlier was
11 property held for use in a trade or business does
12 not come within the definition of capital asset.

13 Q. Okay.

14 A. So I --

15 Q. I'm sorry, were you done?

16 A. That -- that's what I said earlier. I
17 think your -- the question you just asked deals
18 with property held primarily for sale to customers
19 in the ordinary course of a trade or business.

20 Q. Okay.

21 A. That property is also excluded from the
22 definition of capital asset.

23 Q. Are you familiar with an IRS Form 8949?

24 A. I -- I -- I don't know off the top of my
25 head what it is. Yeah. I don't know off the top

1 of my head what it is. I might have seen one
2 recently.

3 MR. FORD: Should we mark
4 this as Exhibit 7?

5 MS. GUERRIER: Seven,
6 please.

7 (Whereupon, exhibit is
8 presented and marked SEC Borden
9 Deposition Exhibit 7 for identification.)

10 THE REPORTER: Exhibit 7.

11 MS. GUERRIER: Thank you.

12 BY MS. GUERRIER:

13 Q. I've provided you with a copy of a Form
14 8949.

15 Have you seen such a form prior to
16 today?

17 A. I believe I have.

18 Q. Do you know what the Form 8949 is used
19 for?

20 MR. FORD: Object to the
21 form. Still beyond the scope.

22 A. Yeah. Off the top of my head, if you
23 ask me what the 89 -- Form 8949 is used for, I
24 wouldn't know.

25 Q. Mm-hmm.

1 A. I can look at it really quickly and get
2 some information about what -- or I could spend
3 time reading it and get more information about --
4 about what it's used for.

5 Q. So your testimony is that you're not
6 familiar with the Form 8949?

7 A. Well, like I said, I -- I've -- I think
8 I've seen Form 8949 within the last year or two.

9 Q. Mm-hmm.

10 A. And I may have given it some thought at
11 that point, but to -- to go into detail about what
12 it is and what it's used for would be difficult.
13 You know, I could take time to look at it and, you
14 know, there -- there are spaces here. Like, I
15 could have thoughts about what the spaces are for.
16 And, you know, I could take some time and -- and
17 read instructions and have more of an idea of what
18 it's used for.

19 But, yeah, I would have to become
20 familiar, more familiar, with it to have, like,
21 any type of discussion about it.

22 Q. Did you review Ripple's federal tax
23 returns in formulating your opinion in this case?

24 A. No.

25 MR. FORD: Sorry. Give me a

1 second. All right?

2 THE WITNESS: Sorry.

3 MR. FORD: Object to the
4 form.

5 BY MS. GUERRIER:

6 Q. Why didn't you review Ripple's federal
7 tax returns in formulating your opinion in this
8 case?

9 MR. FORD: Objection to the
10 form of the question.

11 A. So, in formulating my opinion in the --
12 in this case, I was able to answer the questions
13 and form an opinion without reviewing the Ripple
14 tax return.

15 Q. Did you think that Ripple's tax returns
16 were not important to your opinions in this case?

17 MR. FORD: Objection to the
18 form of the question.

19 A. Yeah. I -- I didn't need the -- to see
20 the Ripple tax return to form the opinion in this
21 case.

22 Q. Okay. So would it matter to your
23 opinion if Ripple filed -- let me rephrase that.

24 Would it matter to your opinion if
25 Ripple reported gains on sales as capital gains to

1 the IRS?

2 MR. FORD: Objection to the
3 form of the question. Beyond the
4 scope.

5 A. So my -- my -- my -- my opinion -- I'm
6 just going to look at it again.

7 So has authoritative guidance been
8 issued regarding the federal income tax treatment?
9 That's Notice 2014-21. That -- that -- the answer
10 to that question wouldn't change.

11 Does any other guidance classify virtual
12 currency such as XRP as a security for federal
13 income tax purposes? That answer wouldn't change.

14 And then with respect to a reasonable
15 buyer or a reasonable -- reasonable seller, that
16 answer wouldn't -- wouldn't change.

17 Q. So with regard to the Opinion 9(c),
18 would a reasonable buyer and seller factor in the
19 capital gains on a sale of a digital asset in
20 determining how that asset should be treated for
21 tax purposes?

22 MR. FORD: Object to the
23 form of the question.

24 A. So, actually, I believe if we go to
25 Notice 2014-21, this applies to virtual currency.

1 If you look at Question 7 -- can you --
2 can you repeat your question? I think this
3 question can answer -- addresses your question.

4 Q. With regard to the Opinion 9(c), would a
5 reasonable buyer and seller factor in the capital
6 gains on the sale of a digital asset in
7 determining how that asset should be treated for
8 tax purposes?

9 A. Okay.

10 MR. FORD: Same -- sorry.

11 Same objection.

12 A. So -- yeah. So Question 7 and Answer 7
13 are dealing with -- with virtual currency and
14 talking about what the character of gain or loss
15 would be when virtual currency is -- is
16 transferred in a transaction that creates gain or
17 loss. And it says it depends upon whether the
18 virtual currency is a capital asset in the hands
19 of the taxpayer.

20 Q. So would it matter to know how the
21 taxpayer is holding the -- the asset to know how
22 it should be treated under federal tax law?

23 MR. FORD: Objection to the
24 form of the question.

25 A. So determining whether an asset is a

1 capital asset, the manner in which it is -- which
2 it is held is important.

3 Q. Okay. Does that factor into your
4 opinion at all?

5 MR. FORD: Objection to the
6 form of the question.

7 A. So my opinion is that reasonable buyers
8 and sellers take into account the federal income
9 tax consequences of transactions. And so a
10 reasonable buyer or seller would take into account
11 whether the asset is or can be a capital asset.

12 Q. Okay.

13 MS. GUERRIER: I don't think
14 I have any more questions.

15 MR. FORD: Okay. Why don't
16 we take just a very short break
17 and --

18 MS. GUERRIER: Sure.

19 MR. FORD: -- I'll let you
20 know if we have anything.

21 MS. GUERRIER: Sure.

22 THE VIDEOGRAPHER: The time
23 on the video monitor is 3:48 p.m.

24 End of Media Unit Number 5.

25 (Whereupon, a recess is taken.)

1 THE VIDEOGRAPHER: The time
2 on the video monitor, 3:55. Start of
3 Vid -- Media Unit Number 6. We're
4 back on the video record.

5 MR. FORD: We don't have any
6 questions for Mr. Borden. And I
7 understand that counsel for the
8 individual defendants does not have
9 any questions either so the
10 deposition is concluded. Thank you
11 very much.

12 MS. GUERRIER: Thank you for
13 your time, Professor.

14 THE WITNESS: Thank you.

15 THE VIDEOGRAPHER: Thank
16 you. The time on the video monitor,
17 3:55 p.m. End of Media Unit Number 6
18 and the end of today's video
19 deposition of Mr. Bradley Borden here
20 in New York, New York.

21 Thank you, everyone.

22 (Whereupon, the deposition
23 concluded at 3:55 p.m.)
24
25

1 STATE OF NEW YORK)

2) ss:

3 COUNTY OF NEW YORK)

4 I hereby certify that the witness in the
5 foregoing deposition, BRADLEY T. BORDEN was by me duly
6 sworn to testify to the truth, the whole truth and
7 nothing but the truth, in the within-entitled cause; that
8 said deposition was taken at the time and place herein
9 named; and that the deposition is a true record of the
10 witness's testimony as reported by me, a duly certified
11 shorthand reporter and a disinterested person, and was
12 thereafter transcribed into typewriting by computer.

13 I further certify that I am not interested in
14 the outcome of the said action, nor connected with nor
15 related to any of the parties in said action, nor to
16 their respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 this 7th day of December, 2021.

19 Reading and Signing was:

20 ___ requested ___ waived _X_ not requested.

21
22
23 _____
24 BRIDGET LOMBARDOZZI, CSR, RMR, CRR
25

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